



Council of New South Wales

Physiotherapy Council of New South Wales - Newsletter May 2016

President's Message

Welcome to the Council's first newsletter for 2016.

I would like to take the opportunity of penning my first President's message to welcome the new members of the Physiotherapy Council and take a moment to thank the outgoing members who saw their terms to completion in 2015. You can read more about this in the Council's [Annual Report](#). In particular, I would like to thank Ms Anne Deans for her tireless and dedicated service to the Physiotherapy Council and prior to that, the NSW Physiotherapy Board. Anne has been a faithful servant of the profession for more years than she would prefer me to mention and she led the Council as President for many years with wisdom, integrity, empathy and enthusiasm.

This newsletter includes advice and thoughts for you to consider as you go about your business as physiotherapists in the myriad incarnations our profession affords. It is an honour and a privilege to do what we do and our patients, students, peers and all those who pay for our services trust us to behave with integrity, honesty and veracity. There is no doubt that we continue to be a "low risk" profession as far as the number and types of complaints received are concerned, however, the Council continues to manage some troubling complaints that have seen physiotherapists behaving in ways that betrays this trust, and in a manner not becoming the profession. This has ultimately resulted in significant sanctions against a few practitioners, including the restriction or loss of professional registration. Thankfully, the majority of complaints that come before the Council about performance or behaviour are not so weighty. All are handled with due diligence but most require minimal action. Nevertheless we all need to bear in mind our responsibilities as a physiotherapist, and the importance of working within our scope of practice, respecting professional/ personal/ sexual boundaries, adhering to our professional [Code of Conduct](#), billing fairly and appropriately, keeping good records, and communicating effectively. I hope you will take time to consider the analysis below of complaints that have come before Council and our strategies for remedial action.

Michael Ryan - President, Physiotherapy Council of New South Wales



Michael Ryan became President of the Physiotherapy Council of New South Wales in July 2015. He is a Specialist Musculoskeletal Physiotherapist and is a Fellow of the Australian College of Physiotherapists. He works clinically in his Sydney CBD specialist clinic consulting primarily with patients with complex spinal pain, particularly lower back pain. Since 2000, he has been an Independent Physiotherapy Consultant with the State Insurance Regulatory Authority (SIRA) and also consults to Third Party insurers. As an Honorary Fellow at Macquarie University, Michael teaches on the Doctor of Physiotherapy Program.

What types of complaints does the Council manage?

The Council is embarking on initiatives to educate practitioners in order to help reduce the number of complaints against physiotherapists. A recent analysis by the Council identified that the majority of complaints relate to:

- Record keeping
- Boundary issues (including sexual assault and consent)
- Health fund fraud issues (in particular the use of HICAPS)

Various approaches for reducing the number of complaints are being considered by Council including:

- Working with universities, education providers and students
- Liaising with the National Board and accrediting authority, and
- Educating and raising awareness with practitioners via newsletters such as this one.

The Council has started identifying what actions it can take to facilitate education among the profession with the aim of reducing incidents arising from poor performance or inappropriate conduct. These include:

- Identifying what is already being used by universities in this area.
- Assessing the type of complaints the Council receives, with reference to complaints data over the past five years, to identify where complaints have increased
- Correlating NSW data with national data to determine national trends
- Being proactive in reducing complaints, particularly those relating to boundary violations, recordkeeping and HICAPS fraud
- Planning and developing relevant training videos to address these complaints
- Targeting training resources at undergraduates, recent graduates and newly registered practitioners, as well as using the resources as a tool for counselling practitioners who are the subjects of complaints.



Taking pictures in Clinical Practice

by **Elizabeth Ward - Council member (Physiotherapist)**

A complaint was recently made to the Council regarding a physiotherapist taking photographs of a client. The Council offers the following reminder to Physiotherapists of their obligations.

Illustrative clinical records are increasingly used in Physiotherapy Practice and can become part of the patient health records. Undoubtedly, there are benefits from recording these clinical images as a visual record of the presenting physical sign(s), and serial pictures may show the progress of the patient's condition over time. It may also be illustrative for the patient to give them a 'third person view' by taking a picture with their own phone/camera, or else take pictures of them doing their exercises so they can refer to this at home. Owing to advances in digital technology, specialist opinion can also be sought, even remotely from the initial place of presentation. Additionally a photograph may have a broader use as a continuing education tool within the practice, or form part of a lecture or research paper.

There are however risks, for the patient and the clinician in taking these images if certain safeguards are not followed. For example, breach of confidentiality, invalid consent procedures, the use of material outside of their intended purpose, and access of the images by unauthorised people. The use of clinical images is a potential minefield for litigation unless best practice is followed, so when and how do we need consent?

Consent

An image taken for the purpose of treating a patient must not be used for any other purpose without express consent. However, if such an image is subsequently to be published, or used for research, written consent must be sought for that specific purpose. Consent is not required when the image taken for treatment or assessment does not allow for the patient to be recognised; in this case, the image can be used for educational or research purposes, with the caveat that "express consent must be sought for any form of publication".

When making a judgment about whether the patient may be identifiable, one should bear in mind that apparently insignificant features may still be capable of identifying the patient to others. As it is difficult to be absolutely certain that a patient will not be identifiable, clinical photographs should not be published or used in any form to which the public may have access without the consent of the patient.

Confidentiality, document storage, and authenticity

Photographs should be treated like all other information contained within a health record: that is, as confidential.

How the images are stored and shared are key elements in maintaining patient confidentiality. Storage of the image varies according to the media used. Concerns about digital storage and possible digital image manipulation can be minimized by the use of software packages that prevents digital image manipulation. Some practices or departments may print off hard copies and subsequently delete the image in the digital camera. This printed image is stored in the written medical notes. If the image is kept on disc it may not be acceptable for legal purposes, as it is not stored by a secure system. Polaroid images should be stored with the notes and the image should have a patient ID affixed to the back. It may be worthwhile for the physiotherapist to also sign across and beyond the ID label to avoid the suggestion of tampering.

Ideally (although as alluded to above not strictly necessary in all cases) written consent should include:

1. An explanation of the need for and purpose of such documentation.
2. That the images will form part of their confidential health records.
3. That these images may be used for research or educational purposes, or both.
4. The name and signature of the physiotherapist.

If consent for clinical purposes only has been given then it must be clearly recorded as such.

Identification and verification

This is mainly of concern with evidential photography – where the patient may use this as evidence in court. The following should be recorded:

1. Date and time.
2. Name of practitioner, photographer (if different), and any others present, including chaperone and parents/guardians in cases involving under 18 year olds.
3. Camera used and film type.
4. Number of images captured.
5. Sites at which photographs taken documented on a drawn (or template) body map in notes.

Each image and print should be labelled.

Storage and disposal of unwanted images

For treatment purposes only, storing prints within the patient's medical notes may be the most appropriate option.

In medico-legal cases, hard copies should be developed and stored in-house, in a sealed envelope away from the notes, accessible only to senior named staff. Destruction of unwanted hard copies should be by shredder, ideally in the practice. Digital images should be captured and stored by computer software packages that cannot be manipulated or hard copies produced, and stored as above and the original captured image deleted. Practitioners should not use their own mobile phones if they are automatically backed up to the 'cloud' as it is difficult to ensure security of the image or complete erasure.

Departmental/Practice policy

If any form of patient photography is to be allowed then a clearly written easily accessible policy should exist to protect both the patient and staff. This should include guidance for clinical and teaching image capture covering the above-mentioned recommendations.

If photography is to be allowed for medico-legal purposes there should be clear guidelines and proformas to aid adequate/appropriate documentation in these cases.

Finally, the patient has the right to change their mind at any time, in which case the photograph should not be used and should be deleted. This should also be noted in the records.

1. Department of Health (UK) - [Good practice in consent implementation guide: consent to examination or treatment](#).

2. [Clinicians taking pictures—a survey of current practice in emergency departments and proposed recommendations of best practice](#) P Bhangoo, I K Maconochie, N Batrick, E Henry.

3. University of Auckland - [Taking and sharing images of patients](#)

Mandatory reporting - Your professional obligation

In New South Wales there is no exemption from mandatory reporting obligations for treating practitioners. Mandatory reporting is a serious professional obligation that cannot be ignored.

A recent Tribunal decision involving a pharmacist demonstrates an increasingly prevalent view that mandatory reporting obligations must be taken seriously by health practitioners, particularly treating practitioners. The full Tribunal decision can be accessed [here](#) and the related HPCA Legal Case Note can be accessed [here](#).

The Tribunal has clearly indicated its view that a significant number of treating practitioners have failed to comply with their statutory and professional obligations, in another case noting that the mandatory reporting provisions are in part designed to *ensure that practitioners do not adhere to a code of silence in relation to significant misconduct by other practitioners*. [Hocking v Medical Board of Australia & Anor [2014] ACTSC 48].

The Tribunal also expressed the view that such failures have likely been to the detriment of public safety as well as the health and professional standing of the practitioner.

You can read more about your professional obligations as a physiotherapist, including guidelines for mandatory reporting, at the [Physiotherapy Board of Australia website](#).

Managing complaints about a practitioner's health

The Health Committee is delegated by Council to oversee and manage the Council's Health Program. It has four members – three registered physiotherapists, one of whom

must be a member of the Council, and a fourth member who represents the community point-of-view. A medical advisor designated by the Health Committee may be included in specific meetings where medical advice or consultation is required. The Committee functions in accordance with Section 152-152M inclusive, Part 8 of the *Health Practitioner Regulation National Law*.

The Council's health program is designed to provide a strong and supportive framework for practitioners and students experiencing personal health problems which have the potential to adversely affect their clinical practice or training. The focus of the program is rehabilitative not disciplinary.

The Committee is responsible for:

- directing a practitioner to undergo a health examination with a Council Appointed Practitioner,
- referring matters to an Impaired Registrants Panel (IRP),
- consider the reports from the IRPs
- impose conditions on a practitioner's registration as agreed by the IRP and the practitioner
- monitor practitioners who have health related conditions on their registration
- consider and decide on the discharge of practitioners from the program when the Committee is satisfied they are able to work without conditions.

The current members of the Health Committee are:



Chair & Physiotherapist Member (current Council Member)

A/Prof Martin Mackey, PhD, MsafetySc
GradCertEdStud(HigherEd), BappSc(Phty), Bec
Dr Martin Mackey is an Associate Professor in the Discipline of Physiotherapy at the University of Sydney. His teaching and research is focussed on work injury prevention and promotion of physical activity, work ability and wellbeing in working life. He was appointed to the Physiotherapy Council of NSW in 2012 by the Minister of Health as the representative for the University sector.



**Physiotherapist Member (current Council member)
Elizabeth Ward**

Elizabeth is a Principal Physiotherapist and Hand Therapist at the Coastal Physiotherapy and Hand Clinic on the NSW Central Coast. She has over 30 years experience in practice in a variety of clinical situations, as well actively participating in the health arena as an inaugural board member of the NSW Central Coast Medicare Local and now a Director of the Hunter New

England Central Coast Primary Health Network. Elizabeth joined the Council and became a member of the Health Committee in July 2015. Elizabeth believes her role on the Health Committee has enabled her to appreciate the unique challenges faced by some practitioners as they strive to practice, and the outstanding effort they put into continuing to work within the profession.



Community Member (current Council member)

Marie Clarke

Marie has recently joined the committee replacing long serving community member Margo Gill. Before retiring in 2013 Marie had over 43 years experience in the health sector as a registered nurse the last 25 years of which she served as a Director of Nursing & Midwifery across a number of public hospitals. Marie has a special interest in the regulation of health practitioners, serving time on the Nursing & Midwifery Board and NSW Nursing & Midwifery Council before joining the Physiotherapy Council. Marie has been actively involved in Impaired Registrant Panels and Performance Review Panels/Committees. Marie hopes to share her knowledge and experience with committee colleagues as they support and guide impaired practitioners.



Physiotherapist Member

Maria Quinlivan

Maria has worked as a Physiotherapist in the NSW public hospital sector since 1980, her current role which she has held since 2001 is manager of the Westmead Hospital Physiotherapy Department. Maria previously served as a member of the NSW Physiotherapy Registration Board and the NSW Physiotherapy Council. In both these roles she maintained an ongoing special interest and involvement in the management of practitioners referred to the health program. Maria has been a member of the Health Committee since its establishment in 2013 and served as Chair until her term on Council completed in June 2015. Maria is a valuable source of advice to new Council members.

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