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AMA submission to the Australian Competition and Consumer Commission – Medicines Australia application for reauthorisation of Code of Conduct Edition 18 – A91436-A91440

adjudication@acc.gov.au

The AMA does not oppose the ACCC's proposed further condition on Medicines Australia's new Code of Conduct Edition 18 – that Medicines Australia members must not make any transfers of value in the categories to be publicly reported unless the health practitioner agrees to that public reporting.

The AMA understands that Medicine Australia intends to advise its member companies to seek direct consent from health practitioners as part of entering into contractual arrangements with them to receive payments in the categories identified in the Code. As noted in our previous submission to the ACCC in July, it is unlikely that those who object will continue in such relationships in any case.

However, the AMA recommends that this condition be deferred for twelve months from the date the new Code of Conduct comes into effect. This would mean that for the first twelve months of the new Code, pharmaceutical companies could still enter into relationships with health practitioners where transfers of value occurred in the categories identified in the Code even if the health practitioners did not provide consent for their individual information to be publicly reported. Data on these relationships would be reported in aggregate. After the twelve month period, pharmaceutical companies would need to comply with the ACCC's condition.

This will be the first time in Australia that the private income of individuals in a professional class will be subject to public scrutiny. A twelve month delay in implementing the ACCC's condition would allow health practitioners to think about and plan for their ongoing relationships with pharmaceutical companies.

Ethical relationships between health practitioners and the pharmaceutical industry benefit patients: pharmaceutical industries can receive advice from practitioners about use of medicines in a real-life practice setting and practitioners can be fully informed about using medicines new to the market. There is a risk that practitioners may not engage in productive relationships because they lack confidence in the new Code.

A twelve month delay in implementing the ACCC's condition would also allow both Medicines Australia pharmaceutical companies and affected health practitioners time to understand and fully comply with the new requirements.

The new Code of Conduct will need to be supported by a comprehensive education campaign to ensure that health practitioners are fully informed about the new requirements and expectations, for example, the need to keep accurate records so that they can later verify the information before it is published. It will also require pharmaceutical companies to implement considerable additional administrative processes to ensure timely and accurate reporting of individuals' information.

The USA experience of implementing new transparency arrangements has not been smooth, for example, significant errors in the information reported and delays in the information being corrected.

Given it is likely there will also be some 'teething' problems in Australia over the first few reporting periods, a twelve month delay of the ACCC condition (representing 2 reporting periods) would allow health practitioners to gain confidence in the governance and administrative arrangements put in place by pharmaceutical companies and to see how information about them will be presented.

Finally, the AMA is unclear how the ACCC's condition would affect an individual's ability under the *Privacy Act 1988* to withdraw consent. This issue should be clarified prior to a Code of Conduct with this condition coming into effect to ensure pharmaceutical companies and health practitioners understand their legal limitations and obligations.

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