

ATMS MEMBER STATEMENT

Victorian Natural Medicine Practitioner Alert:- Regarding the Victorian Health Complaints Act

Background

Earlier this year, ATMS sent you notification that the Victorian Health Complaints Act (the Act) had come into force. This is a new Act that is designed to facilitate the lodgement of complaints against anyone who provides a health service, regardless of whether they are a registered or unregistered health service provider. Within the Act is a new Code of Conduct (the Code), which all providers of health services in Victoria must now abide by. Complaints can be made against a health service provider who has breached this Code. The Victorian Health Complaints Commission (VHCC) administers this Act. Financial and other penalties, including orders prohibiting a person from providing a health service, may be applied where a complaint is upheld. In addition, interim prohibition orders for up to twelve weeks (orders prohibiting a person from practising) may be applied while an investigation into a complaint is being carried out by the VHCC. The Act can be found here:-

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/6984F85370CAF903CA257FA80016089A/\\$FILE/16-022aa%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/6984F85370CAF903CA257FA80016089A/$FILE/16-022aa%20authorised.pdf)

The Code contains provisions that, to ATMS's knowledge, do not exist in any other similar Australian Code of Conduct. There are two sections of the Act that are relevant. Section 6(1)(a) of the Act appears to make allowance for a person who has not actually been treated by a health service provider, to make a complaint about that provider, on the basis of an "unreasonable provision of a health service". Section 9(2)(c) of the Code states that "a general health service provider must not make claims either directly to clients or in advertising or promotional materials about the efficacy of treatment or services the provider provides if those claims cannot be substantiated."

What this means for Victorian practitioners is that anyone, regardless of whether you have seen them as a client, or not, could make a complaint regarding your clinical practice, based on the notion that the efficacy of the health service that you provide cannot be substantiated. This applies to advertising that you provide a specific health service modality, or actually providing any of these services to a client.

You may be aware that in 2015 a report entitled, "Review of the Australian Government Rebate on Natural Therapies for Private Health Insurance" was released. The National Health and Medical Research Council (NHMRC) did most of the work carried out in the report. The report can be found here:-

<http://www.health.gov.au/internet/main/publishing.nsf/content/phi-natural-therapies>

This report presented findings by the NHMRC into whether or not there was "... reliable, high quality evidence that any of the natural therapies considered were clinically effective." Seventeen natural therapies modalities were subject to their review, and the report found no reliable, high quality evidence for any of them. These modalities included:

- Alexander technique
- Aromatherapy
- Ayurveda
- Bowen therapy
- Buteyko
- Feldenkrais
- Herbalism/Western herbalism
- Homeopathy
- Iridology
- Kinesiology
- Massage therapy
- Naturopathy
- Pilates
- Reflexology
- Rolfing
- Shiatsu
- Tai chi
- Yoga

Also in 2015, the NHMRC released a report entitled "Evidence on the effectiveness of homeopathy for treating health conditions" which found that, "there are no health conditions for which there is reliable evidence that homeopathy is effective." That report can be found here:

https://www.nhmrc.gov.au/files_nhmrc/publications/attachments/cam02a_information_paper.pdf

It has now been confirmed that the Victorian HCC may use these reports in assessing complaints.

The Problem

What this means is that, theoretically, any person could use the NHMRC report as a means of lodging a complaint against you, in relation to section 9(2)(c) of the Code, and the VHCC would be inclined to view the complaint as justified, unless you can produce convincing evidence to the contrary.



What you can do

Avoid Complaints

Generally, there are a number of precautions that you can take to minimise the risk of having complaints raised against you, in regard to any professional code of conduct, and these include, but are not limited to:

- Maintain your professional indemnity and public liability insurance.
- Maintain your professional association membership.
- Do not practise any modality without the appropriate qualifications to do so.
- Avoid any action that is not within your qualifications and clinical experience.
- Keep your clinic safe and hygienic.
- Regularly undergo continuing professional education and training.
- Do not provide inaccurate or deceptive advice.
- Maintain your professional client boundaries.
- Maintain client confidentiality.
- Avoid claiming that you can cure diseases, or that your products or services can provide benefits for which there is insufficient evidence.
- Communicate clearly and honestly with clients.
- Do not exploit or discriminate against clients.
- Observe all of your legal, legislative and ethical practice requirements.
- Carefully read the Act and the Code, and ensure that you abide by all the elements of these.

If you are notified of a complaint, start by reading our recommendations on “Dealing with Complaints”, available here - <http://www.atms.com.au/wp-content/uploads/2017/07/atms-member-statement-dealing-with-complaints-made-by-clients.pdf> - then review the following recommendations:

Dealing with Complaints made by Third Parties in Relation to the Code of Conduct

In the event that you are notified by the VHCC that a complaint has been lodged against you, in relation to an alleged breach of the Code by a third party, that is, someone that you have not seen as a client:

- Be aware that in most cases you will have no more than twenty business days to respond to the complaint.
- Read the complaint notification carefully. Do not panic - act carefully and rationally, and be aware that there is a solution to this problem.
- Note that financial and other penalties may be applied if you fail to meet any of the requirements put to you by the VHCC, including the time restraint referred to above.
- Notify ATMS by email. Record the time and date of this notification.
- Notify your professional indemnity insurance provider as soon as possible, by phone and email. Record the time and date of this notification, and with whom you spoke.



- In most cases, your professional indemnity insurer can provide you with free legal assistance, via a nominated lawyer or law firm. Obtain these details and speak with the lawyer as soon as possible and follow their advice. Be aware that the lawyer that you speak with may not be familiar with the Act, the Code, the services that you provide, or the background to these. If the complaint that is been made against you is made in reference to section 9(2)(c) of the Code, and you are required to defend yourself against this complaint, you will need to demonstrate that the modality that is the subject of the complaint is effective. To this end, it may be useful to make the lawyer aware of:
 - The NHMRC report referred to above.
 - Where the modality that has been complained about is homeopathy, find a copy of the complaint made to the Commonwealth Ombudsman in relation to the NHMRC report (see:- <https://www.hri-research.org/wp-content/uploads/2017/04/Executive-Summary-to-Ombudsman-Complaint-re-NHMRC-Homeopathy-Review-FINAL.pdf>). Note that the complaint made to the Commonwealth Ombudsman relates specifically to the report on homeopathy, and that this complaint is largely based on flawed methodology. In assessing other modalities, the NHMRC often used other methodologies, and so this complaint to the Commonwealth Ombudsman on homeopathy may not be relevant.
 - Any scientific evidence that you hold to justify the modality that the complaint has been made about (the most valuable of which will be systematic reviews, meta-analyses, placebo-controlled randomised trials, and N-of-1 studies, that show evidence of efficacy).
 - Any secondary sources of validation that you hold (references to the successful application of the modality in documented case studies, textbooks, journals, etc.).
 - Any client records that you hold (de-identified for privacy) that provide evidence of clinical benefit for the modality.
 - Any historical reference to the modality being used for a particular disease, where the treatment of that disease forms part of the complaint. The reason for suggesting this is that the Therapeutic Goods Administration (TGA) allows for the use of traditional evidence sources (literature sources such as material medica, pharmacopoeia and case reports, with a publication date of seventy-five years or older), or references to medicines in official monographs (such as the Health Canada monographs) that justify the claims made in TGA listed retail health care products. For more on this see: <https://www.tga.gov.au/sites/default/files/cm-evidence-claims-1104.pdf>.
 - Contact the ATMS as we may be able to help provide relevant evidence in support of your modality.



What is ATMS doing about this

We have sent this information to you in the hope that it will be of use to you if you have a complaint lodged against you in relation to an alleged breach of the Code. We are trying to establish a dialogue with the Victorian Health Complaints Commissioner with a view to raising the inequity of using the NHMRC reports as tools in assessing complaints. We will provide you with further updates on this once we have more information back from the Commissioner.

End

Date approved – 25 July 2017

