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Dear Michael

**Submission on the draft statement for doctors on the subject of prescribing**

The Society's Health Law Committee (the Committee) welcomes the opportunity to comment on the Medical Council's draft statement for doctors on the subject of prescribing (the draft statement). The submission will follow the format of the draft statement and comment on the clauses numerically.

Clause 1

This clause overlooks the possibility of a patient's incompetence, and in these cases the need for someone else to make decisions on their behalf. The third bullet point could be expanded to include this, possibly by using the phrase "Ensure that the patient has given informed consent, or that there is other lawful authority..." at the start of that point. This would ensure that the parent of a minor, a welfare guardian, or the holder of an enduring power of attorney could also provide informed consent where appropriate.

There is an expectation in bullet point three that it is the responsibility of a prescriber to ensure their patient knows how to take the prescribed medication, where traditionally this is a pharmacist's role. The Committee has no views about this, but questions whether this is not a significant change to common practice.

Clause 2

It is regular practice for pharmacists to prescribe on the basis of a faxed prescription, and there has been some debate about whether this is strictly legal. To ignore this common practice by considering it to be a breach of standards may well impair functioning, especially in the light of attempts to set up an electronic prescribing system, which shows there is a need for this. The final bullet point should read "clauses" rather than "sections", as "section" is only used for statutes.

Clause 3

There is some clarification needed here as to whether the face to face consultation required is initial, or every time a prescription is necessary.

Clause 4

It is unclear whether clauses 3 and 4 are intended to be alternative or cumulative.

### Clause 7

There are statutory requirements for what goes into a prescription and the draft statement should either replicate these requirements, or there should be a link referring to them. The draft statement here provides a diluted version of the requirements, which prescribers might reasonably rely on but would leave them breaching the statutory requirements.

For clarity and in line with the relevant legislation, “repeat” should be referred to here where the current word used is “refill”.

The Committee also notes that there are inconsistencies between the Medicines Act and Pharmac subsidy rules as to prescribing, which may cause confusion. An officially published electronic checklist of what is required in a prescription might help practitioners here.

### Clause 8

This clause is inconsistent with the Misuse of Drugs Regulations 1977, which specify the information that must be provided for children’s medicines.

### Clause 9

This clause needs further detail as to how it will work in practice, and what this obligation means. Especially in a hospital setting, it can be very hard for a pharmacist to get hold of a prescriber.

### Clause 11

There should be an obligation on the prescriber to ensure the patient knows the medicine is unapproved, why it is unapproved, and the implications of that. The explanation given should be tailored to the complexity of the reasons why it is unapproved.

This clause does not include guidance on unapproved use of an approved medicine. For example, some approved medicines that are routinely prescribed for other problems can be effective in pain management.

### Clause 12

Under s29 of the Medicines Act 1981, the Director-General of Health must be notified of the supply of unapproved medicines. It is important that the patient knows that his or her personal health information and identification will be disclosed.

### Clause 13

The Committee supports this statement and encourages communication and follow up between clinicians. However there is a range of contexts relating to this statement, and clearer guidelines as to which clinician should take responsibility for a patient would be helpful.

### Clause 17

Practitioners who wish to use standing orders have a responsibility to familiarise themselves with the requirements of the Medicines (Standing Order) Regulations 2002, although the Committee appreciates that this is a complex area.

### Clauses 19 and 20

There is a problem with the terminology used here. The legal definition of a repeat prescription is a single prescription that is dispensed on more than one occasion. However this seems to be referring to a continuation of current therapy by means of a new prescription. The terminology needs to be consistent with the Medicine Regulations 1984 and the Misuse of Drugs Regulations 1977, which refer to “repeat” meaning the above legal definition.

The Committee considers that this would be a good area to discuss the problems surrounding prescribing under close control.

### Clause 21

Patients must be informed that they have been given a sample should they be given one, and prescribers should avoid giving them simply because they are available. Prescribing should be centered on the patient and their symptoms rather than the availability of the medicine, and the draft statement should note this. Care must also be taken to ensure a patient does not become reliant on a medicine they initially receive free, and subsequently have to pay for.

### Clause 22

This clause is incorrect as there is no reference to disposal of drugs in the legislation mentioned.

### Clause 25

This clause seems to be inconsistent with the Misuse of Drugs Regulations 1977, which states that all Class A, B and C (CI-iv) drugs should be kept in a CD safe, not simply those with potential for misuse.

### Clause 27

This clause needs to point out that it is a breach of the pharmacy licensing requirements contained in the Medicines Act 1981 for a commercial relationship to exist between a prescriber and a pharmacy that would effect the way that prescriptions are issued and other related matters.

### Clause 29

The Committee recommends stronger wording here, and suggests replacing “should” in the second sentence with “must”.

Should you have any questions please contact the Committee secretary, Diana Brown, by phone (04) 463 2967, or email [diana.brown@lawsociety.org.nz](mailto:diana.brown@lawsociety.org.nz).

Yours sincerely

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**Member, Health Law Committee**