Welcoming the Medical Council's review of doctors and health-related commercial organisations: more is needed to ensure financial factors never influence patient care

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In September 2022, the Medical Council of New Zealand released a consultation paper suggesting that referrals to a facility where a doctor has a financial interest should only occur where there is no suitable alternative that meets the patient's needs. As independent radiologists, we strongly believe that financial factors should never influence decisions relating to patient care. The Medical Council's draft guidelines are less restrictive than the situation in countries such as Australia and the United States, where ownership interests that conflict with patient care are heavily proscribed or banned.

Those who oppose the proposed changes to the Medical Council's draft regulations may argue that disclosing their own financial interest in a facility to their patient sufficiently mitigates the potential impact on patient care. This does not take into account the power imbalance that exists in a relationship between medical professionals and patients.

The draft guidelines released by the Medical Council are rightly the topic of rigorous debate. It is our opinion that the guidelines should be further strengthened, ensuring that the personal or business interests of medical practitioners play no part in seeking out and providing the best treatment for patients.

One of the strengths of the New Zealand health system is the existence of vigorous and competitive private practices operating alongside our core public health system and adding vitality, innovation and outreach to it. Good health outcomes for all depend on an effective interplay between these two parts of the system. Therefore, anything that might undermine public confidence and trust in those private practices and how they operate would have significant negative impacts on the whole sector, not just private providers. Evidence globally and locally is clear. When citizens lose trust in their institutions, we are all worse off. We need to do everything we can to ensure that this does not happen in our health system.

At the very heart of public trust is an explicit understanding that all parts of the health sector will put the needs of the patient first and that the personal or business interests of the practitioners will play no role in seeking out and providing the best treatment for each patient. It is in this context that we should react to the Medical Council's current consideration of submissions on a draft statement concerning doctors and health-related commercial organisations.

With reference to referrals to a facility in which the doctor has a financial interest, the draft consultation document includes the statement that: "*You should only do so if you have explored other options with your patient, and there is no suitable alternative that meets your patient's needs.*"[1]

Unsurprisingly, the draft is the subject of vigorous debate and has solicited a record number of responses. Our organisation has argued that the guidelines should be further strengthened. The fact that such vigorous debate is occurring around these issues should be supported and celebrated.

In our speciality, being objective is especially important. Part of a radiologist's role is to act at arm's length, providing independent advice to the referring practitioner on the best treatment for the patient. This ensures that the patient is less likely to be exposed to unnecessary radiation or surgical treatment.

As independent radiologists, we take a strong view that our commercial interests should never interfere with what is best for the patient. And it

is in radiology that we are seeing the emergence of business models that arguably do not put the needs of the patient at their core. We are seeing the emergence of what we consider to be a deeply concerning trend where some specialists are becoming financial shareholders in the radiology practices that they refer to. These are considered "non-arm's length referrals".

In our view, this is the opposite of actively avoiding potential conflicts of interest.

The obvious dangers are that surgeons are incentivised to over-refer when they have a financial interest in the radiology practices they are sending their patients to. It may also mean that they will refer more to the practice that they have an ownership stake in, even if a better qualified or specialist independent practitioner might be more suited to their patient's needs. It could mean that unnecessary medical procedures take place as a result.

What is more, this trend could well be exacerbated if ownership arrangements of this sort lead to less competition in private radiology services, because the surgeons minimise referrals elsewhere. This could be particularly problematic in regional New Zealand.

In this context it is striking to note that the Medical Council's draft guidelines—criticised by some as being too tough—are actually far less restrictive than similar guidance and laws in the countries New Zealand often compares itself. In Australia and the United States, ownership interests that might conflict with patient centrality are heavily proscribed or even banned.[2,3] This is in part because these countries have been down this path before us and have seen the evidence. Non-arm's length arrangements have led to unnecessary referrals and unnecessary operations.[4]

One alternative put forward by those who would seek to operate non-arm's length referral businesses appears to be that simply disclosing these interests to the patient will ensure that their interests are at the forefront. With the greatest of respect, we think that disclosure without other safeguards will be inadequate. It is hard to think of a more unequal relationship than the one between an expert and well-resourced medical professional and a patient who is, by definition, unwell, vulnerable and less likely to question the advice they are given. That is the very reason we have codes of ethics. In our view, it is simply not good enough to rely on disclosure alone.

Those who argue that the draft regulations should be watered down also suggest that investment and innovation may decline as a result of the proposed changes. It is important to differentiate here between surgeons owning facilities that are a core part of their speciality—such as a surgeon owning an operating theatre—and surgeons owning radiology practices that need to be independent to offer them and patients an independent view. We see no evidence of a lack of investment in radiology practices in New Zealand—indeed, just the opposite. Independently owned radiology practices in New Zealand have historically been the subject of very significant new technology investment, with improved treatment as a result. That continues today. The reason is obvious: they invest because it is their core business. That is how they innovate and compete. The emergence of non-arm's length radiology practices may well lead to exactly the opposite outcome, and that is a real danger. Surgeon owners may see radiology practices as a subservient part of their core business and therefore not worthy of proper investment over time. That doesn't just go to the level of investment in new technology and innovation, but also to their propensity to service all customers, not just the most profitable.

Public trust in our health system—including private providers—is critically important for its future success. Patients and those close to them need to feel confident that the medical practitioner advising them has their interests at the forefront. That is not antithetical to the existence of private sector health providers competing vigorously with each other. To the contrary, such competition is likely to lead to investment, innovation and better outcomes over time. But if we later find that commercial interests were impacting that advice, the damage to public trust would be enormous and long lived. That is why we should support the Medical Council review and advocate for strengthening the guidance concerning activities where conflicts might occur.

COMPETING INTERESTS
The New Zealand Institute of Independent Radiologists supported the creation of this letter. Adrian Balasingam has leadership roles in the New Zealand Institute of Independent Radiologists and the RHCNZ Medical Imaging Group, where he is also a shareholder.

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