

ResMed submission to TTIPAB Code of Conduct review

2 June 2017

GENERAL COMMENTS

ResMed is a global leader in the development, manufacturing, distribution and marketing of medical devices and cloud-based software applications that diagnose, treat and manage respiratory disorders including sleep disordered breathing, or SDB, chronic obstructive pulmonary disease, or COPD, neuromuscular disease and other chronic diseases.

ResMed is a global leader in connected care, with more than 3 million patients remotely monitored every day. Our 5,000-strong team is committed to creating the world's best tech-driven medical device company – improving quality of life, reducing the impact of chronic disease, and saving healthcare costs in more than 100 countries.

ResMed relies on a combination of patents, trade secrets, copyrights, trademarks and non-disclosure agreements to protect our proprietary technology and rights. ResMed is therefore a large consumer of IP attorney services.

ResMed's executive team is committed to the highest standards of ethics and professional integrity, and we expect our legal advisors to meet the same standards. Specifically, ResMed expects its patent attorney advisors to be competent, diligent, truthful, candid, courteous and of undivided loyalty.

We suggest the Code of Conduct should focus on these core expectations and be supported by examples and guidelines which assist with specifics.

Further, as a guiding principle, the Code should be harmonious with corresponding legal professional codes of conduct in Australia and other jurisdictions such as the UK and the US.

- Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (<http://www.legislation.nsw.gov.au/#/view/regulation/2015/244/full>)
- American Bar Association: (http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html)

SPECIFIC RESPONSES

See below for ResMed comments on certain requested issues.

Issue 2: Equal application of provisions generally

- *Should the Code apply the provisions of sections 11(4), 12, 13(1), 13(2), 14(2), 14(3), 14(4) and 24(3) to all registered attorneys – including, in particular, incorporated attorneys and attorney directors – not just registered attorneys who are individuals?*

Yes.

- *Should the provisions of sections 22 and 23 be consolidated with the provisions of section 21?*

Yes.

Issue 3: Elaboration of the Professional Conduct Standards

- *Should the professional conduct standards of the Code be elaborated by the introduction of Guidelines providing guidance in relation to the discharge of the standards, in a manner similar to which the UK Rules provide such guidance?*

Yes.

- *If so, which standards should be so elaborated, and what is the guidance that should be provided in relation to them?*

ResMed's general preference is for the Code to be less prescriptive. By limiting the Code to a set of core expectations, each may be illustrated with guidelines.

Issue 5: Equal application of conflict of interest provisions

- *Should the Code's conflict of interest provisions apply to all attorneys equally, whether they are individual attorneys, incorporated attorneys that are not part of a group, or incorporated attorneys that are part of a group (either a publicly listed group or a privately owned group)?*

Yes.

Issue 6: Double employment

- *Should the Code expressly permit double employment in non-contentious matters so long as the clients provide sufficient consent?*

No.

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- *If so, what type of consent should the Code specify as being sufficient for this purpose?*
 - *Should the Code provide guidance on what information must be provided to a client for its consent to be sufficient to permit an attorney to act in a double employment situation?*

Yes.

- *If so, what is the information that should be specified in the guidance?*
- *Should the Code expressly prohibit double employment in contentious matters?*

No. However it should be noted that ResMed would be reluctant to engage attorneys in double employment in any matters, contentious or otherwise. Furthermore, ResMed would expect all prospective attorney advisors to be candid with respect to the potential for conflicts.

- *If so, should the Code provide guidance on what are to be regarded as contentious matters for this purpose? What matters are to be considered contentious matters for this purpose?*
- *If not, what other safeguards might be implemented to protect clients in contentious matters giving rise to, or likely to give rise to, double employment?*

Issue 7: Resolution of conflicts of interest

- *Should the Code apply the obligation to take steps to resolve a conflict of interest to all types of such conflict?*

No.

- *Should the Code provide guidance on what steps an attorney must take to resolve a conflict of interest?*

Yes.

- *If so, what are the steps that should be specified in the guidance?*

Other amendments / general comments

ResMed suggests that the Code be focused on the core expectations set out above.

ResMed suggests that Attorney's obligation to act in the interests of the Profession (section 11(1)(d)) should be removed.

ResMed suggests that the Code be less prescriptive, for example sections 13, and 14 are unnecessarily detailed.

ResMed believes that the present review is an opportunity to actively solicit the view of other consumers of IP attorney services as to the scope and content of the Code.