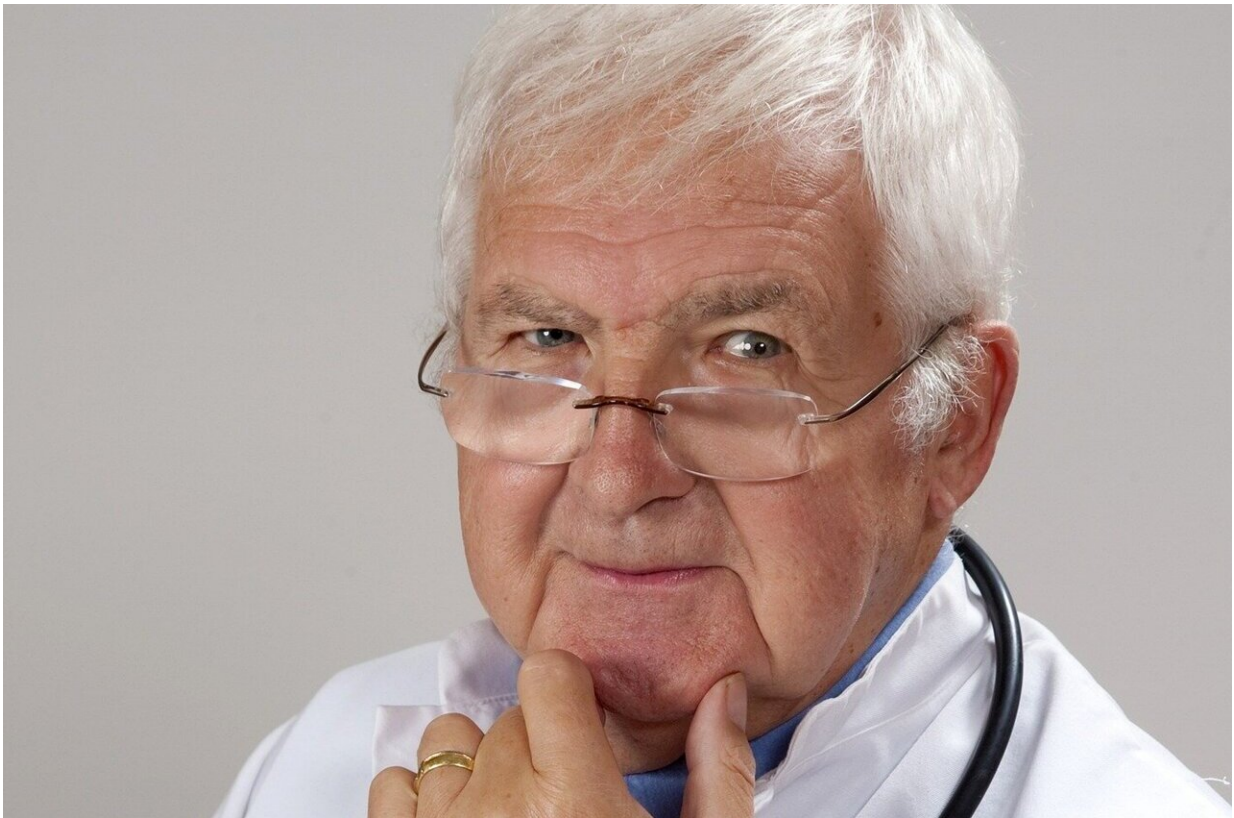


How old's too old to be a doctor? Why GPs and surgeons over 70 may need a health check to practice

August 7 2024, by Christopher Rudge



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A growing number of complaints against older doctors has prompted the Medical Board of Australia to [announce](#) today that it's reviewing how

doctors aged 70 or older are regulated. Two new options are on the table.

The first would require [doctors](#) over 70 to undergo a detailed health assessment to determine their current and future "fitness to practice" in their particular area of medicine.

The second would require only general health checks for doctors over 70.

A third option acknowledges existing rules requiring doctors to maintain their health and competence. As part of their [professional code of conduct](#), doctors must seek independent medical and psychological care to prevent harming themselves and their patients. So, this third option would maintain the status quo.

Haven't we moved on from set retirement ages?

It might be surprising that stricter oversight of older doctors' performance is proposed now. Critics of mandatory retirement ages in other fields—for judges, for instance—have long questioned whether these rules are "[still valid in a modern society](#)."

However, unlike judges, doctors are already [required to renew their registration](#) annually to practice. This allows the Medical Board of Australia not only to access sound data about the prevalence and activity of older practitioners, but to assess their eligibility regularly and to conduct [performance assessments](#) if and when they are needed.

What has prompted these proposals?

This latest [proposal](#) identifies several emerging concerns about older doctors. These are grounded in external research about the effect of age

on doctors' competence as well as the regulator's internal data showing surges of complaints about older doctors in recent years.

Studies of medical competence in aging doctors show [variable results](#). However, the Medical Board of Australia's consultation document emphasizes studies of neurocognitive loss. It explains how physical and [cognitive impairment](#) can lead to poor record-keeping, improper prescribing, as well as disruptive behavior.

The other issue is the number of patient complaints against older doctors. These "notifications" have surged in recent years, as have the number of disciplinary actions against older doctors.

In 2022–2023, the Medical Board of Australia took disciplinary action against older doctors about 1.7 times more often than for doctors under 70.

In 2023, notifications against doctors over 70 were 81% higher than for the under 70s. In that year, patients sent 485 notifications to the Medical Board of Australia about older doctors—up from 189 in 2015.

While older doctors make up only about 5.3% of the doctor workforce in Australia (less than 1% over 80), this only makes the high numbers of complaints more starkly disproportionate.

It's for these reasons that the Medical Board of Australia has determined it should take further regulatory action to safeguard the health of patients.

So what distinguishes the two new proposed options?

The "fitness to practice" assessment option would entail a rigorous assessment of doctors over 70 based on their specialization. It would be

required every three years after the age of 70 and every year after 80.

Surgeons, for example, would be assessed by an independent occupational physician for dexterity, sight and the ability to give clinical instructions.

Importantly, the results of these assessments would usually be confidential between the assessor and the doctor. Only doctors who were found to pose a substantial risk to the public, which was not being managed, would be obliged to report their [health condition](#) to the Medical Board of Australia.

The second option would be a more general health check not linked to the doctor's specific role. It would occur at the same intervals as the "fitness to practice" assessment. However, its purpose would be merely to promote good health-care decision-making among health practitioners. There would be no general obligation on a doctor to report the results to the Medical Board of Australia.

In practice, both of these proposals appear to allow doctors to manage their own general health confidentially.

The law tends to prioritize patient safety

All state versions of the legal regime regulating doctors, known as the National Accreditation and Registration Scheme, include a "paramountcy" provision. [That provision](#) basically says patient safety is paramount and trumps all other considerations.

As with legal [regimes regulating childcare](#), health practitioner regulation prioritizes the health and safety of the person receiving the care over the rights of the licensed professional.

Complicating this further, is the fact that a longstanding principle of health practitioner regulation has been that doctors should not be "[punished](#)" for errors in practice.

All of this means that reforms of this nature can be difficult to introduce and that the balance between [patient safety](#) and professional entitlements must be handled with care.

Could these proposals amount to age discrimination?

It is premature to analyze the legal implications of these proposals. So it's difficult to say how these proposals interact with Commonwealth age- and other anti-discrimination laws.

For instance, one complication is that the federal age discrimination statute includes an exemption to allow "qualifying bodies" such as the Medical Board of Australia to discriminate against older professionals [who are](#) "unable to carry out the inherent requirements of the profession, trade or occupation because of his or her age."

In broader terms, a license to practice medicine is often compared to a [license to drive](#) or [pilot an aircraft](#). Despite [claims of discrimination](#), New South Wales law requires older drivers to undergo a medical assessment [every year](#); and similar requirements affect older [pilots and air traffic controllers](#).

Where to from here?

When changes are proposed to health practitioner regulation, there is typically much media attention followed by a consultation and behind-the-scenes negotiation process. This issue is no different.

How will doctors respond to the proposed changes? It's too soon to say. If the proposals are implemented, it's possible some older doctors might retire rather than undergo these mandatory health assessments. Some may argue that encouraging more older doctors to retire is precisely the point of these proposals. However, [others have suggested](#) this would only exacerbate shortages in the health-care workforce.

The proposals are open for [public comment](#) until October 4.

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