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Dear Sirs,

HCPC response to the Department for Science, Innovation and Technology and the Office for Artificial Intelligence's consultation on AI regulation: a pro-innovation approach

The Health and Care Professions Council (HCPC) is a statutory regulator of 15 health and care professions in the United Kingdom, with over 300,000 registrants on our Register. Our role and remit are underpinned by the Health Professions Order 2001. We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our role is to protect the public.

We welcome the opportunity to engage with this conversation about the use and regulation of AI and its future, particularly considering that technology will play an increasing role in the way our registrants practise in their professions.

We are largely supportive of the principles outlined as a systems-based approach to regulating the development of AI and its use in healthcare. However, we would welcome further discussion around how professional regulators, and the professions that we regulate would interact with the framework put forward in the consultation, acknowledging that AI is still developing and the framework will need to be able to respond to an rapidly evolving landscape.

Part of our role is to set the standards that our registrants must meet to maintain their registration with us. Our standards of proficiency are the threshold standards which set out what a student must know, understand and be able to do by the time they have completed their training, so that they are able to apply to register with us. Some of these standards are generic (applying to all the professions we regulate) and some are profession-specific. The standards do not prescribe exact duties or tasks that the registrant can or cannot undertake. Once on our Register, registrants must continue to meet those standards of proficiency which relate to the areas in which they work.

We recently reviewed our standards of proficiency, and the new standards will come into force on 1 September 2023. Recognising that technology plays an increasing part of the work that our registrants do, one of the new focuses of the standards of

proficiency is that of digital skills and new technologies. To this end, some of relevant standards that we have introduced into our updated generic standards include standards requiring registrants to:

- *recognise that the concepts of confidentiality and informed consent extend to all mediums, including illustrative clinical records, such as photography, video and audio recordings and digital platforms (standard 6.5):*

- *use information, communication and digital technologies appropriate to their practice (standard 7.7)*

- *use digital record-keeping tools where required (standard 9.3)*

- *be able to change their practice as needed to take account of new developments, technologies and changing contexts (standard 13.)*

For profession specific standards, radiographers have a specific standard that talks of using AI within their practice:

- *demonstrate awareness of the principles of Artificial Intelligence (AI) and deep learning technology, and its application to practice (standard 12.25)*

We recognise that the scope of practice of our registrants will evolve as their career progresses. We do not limit the particular scope of practice of our professions but require registrants to work within their scope at all times to ensure they are practising safely, lawfully and effectively. We provide guidance for registrants on how to identify their scope of practice and when moving into a new scope of practice.

In addition to the standards of proficiency, our standards of conduct, performance and ethics, set out how we expect our registrants to behave and standards of continuing professional development require registrants to keep their skills and knowledge up to date. Finally, we set standards of education and training against which we assess education and training programmes to ensure that learners who complete these programmes are able to meet our standards of proficiency.

We hold periodic reviews for our standards every five years to ensure they are kept up-to-date and reflect current practice. The expectations that we set in our standards are broad to encompass, as much as possible, developments that may take place in between reviews.

Although, as outlined above, we do ask our professionals to take steps to ensure that their practice keeps up-to-date with technological developments, the broader question of the regulation of AI raises a number of questions for professional healthcare regulators and others to consider:

- How would the framework operate in relation to health and care professionals using AI? For example, where would accountability lie if the use of AI by a regulated professional resulted in harm to a patient or service user? This could include direct types of harm such as injury, or incorrect diagnoses.

- How would the framework/principles incorporate AI where the AI (or the healthcare professional operating the AI tool) was based in a different country to the patient or service user?
- How will professionals manage the risk around and recognise potentially malicious technology and AI and again, where will the accountability for this lie?
- How will professionals ensure that they receive informed consent from service users about the use of AI technologies?
- In the longer term, how can professionals be supported to use AI as one of the tools at their disposal to enhance rather than replace their expertise? It is important that professionals retain and develop their skills and knowledge around AI, maintain independence of thought based on their expertise and all available evidence, and ensure the best interests of service users is prioritised. For example, professionals should have the skills to be able to question the outputs of AI to ensure service user safety.

The health and care landscape will, without doubt, see huge changes in how technology, and particularly AI is used. The frameworks regulating it must be innovative, adaptable and responsive to change. Our role as a professional regulator is to ensure that our registrants are working in a safe and effective way with the appropriate support and frameworks in place to further our purpose in public protection. We would welcome further discussion on the framework and principles and how they apply to healthcare professionals and healthcare professional regulators.

Yours faithfully,

Andrew Smith
Interim Deputy Chief Executive