Questions After Hearing for NSW Medical Board

1. Do you have any general observations to make on the efficacy of lines of communication between the Board and the Health Care Complaints Commission?

2. Specifically, the Board suggests that where its own Conduct Committee – which includes seven medical and two lay members - considers that the wrong expert/peer has been chosen, or that that person has applied the wrong standard, the Commission ought to be obliged "to at the very least seek a further view."

   The Commission rejects this proposal, but how would you suggest it might work in practice?

3. The Medical Board also raised concerns that the principle of co-regulation underlying the Act is not applicable at the conclusion of an investigation, and proposed that there should be either consensus, or a replication of the requirement under s 13 of the Act that the more serious course of action should be followed.

   Given that the Commission states that disagreements between registration boards and the Commission are rare, how often would you suggest that this is a real issue, and to what extent does it have a deleterious effect on the proper functioning of the health care complaints system in NSW?

4. With respect to fairness of proceedings, the Commission has suggested that where a Board's handling of a complaint against a practitioner becomes protracted, the Board should be required to give reasonable progress reports to the complainant. What is your response to this proposal, and how do you think it might impact upon the Board?

5. The Committee is particularly concerned with those bodies in New South Wales which exercise important functions within the health care complaints system. Having regard to the issues raised in the Committee's Discussion Paper, what do you consider would be the response of your Board to oversight of its annual and other reports by a Parliamentary Committee?

6. Are there any other comments that you would like to make with respect to the Inquiry's Terms of Reference?

7. Is there anything you would like to suggest which would assist the Committee in the exercise of its oversight role?

Question Taken on Notice

1. In the course of the hearing, reference was made to a *Sunday Telegraph* article of 21 February titled "*Foreign doctors fast tracked*", which claimed, "Foreign doctors are being fast tracked into Australia by bypassing the standard registration process despite statistics revealing that they are responsible for half of all medical error and disciplinary cases." Can you please advise the Committee as to the accuracy of the quoted statistic, and the actual percentage of medical disciplinary cases that involved international medical graduates?
   [Context: pp. 55-57 of hearing transcript]

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CONFIDENTIAL

Mr Mel Keenan
Committee Manager
Committee on the Health Care Complaints Commission
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Keenan

Re: Operation of the Health Care Complaints Act - 1993

I refer to your letter of 17 March 2010 asking some specific questions in relation to the Health Care Complaints Commission.

Responses are as follows:

1. The Commissioner attends a monthly meeting with members of the Board's Conduct Committee and secretariat, while the Board's Medical Director attends weekly meetings with the Commissioner. Operational staff also have regular contact with staff of the Commission, and it is considered that there is a satisfactory level of communication.

2. Under the current law, this proposal can only work in practice if the Commission decides to accept it, as there is no legal obligation. A legislative solution would be to be more specific about the nature of the consultation, requiring the Commission to obtain further advice in the event of a unanimous different view from the Board.

3. As stated in evidence before the Committee, the frequency of disagreement at the conclusion of an investigation has diminished significantly in the last eighteen months. The point made by the Board in its October 2008 submission was that it finds it unsatisfactory to have such an important decision point in what is described as a co-regulatory model subject to effective veto by one of the parties, so that the outcome is in reality whatever the Commission wants.

   The Board considers it would be preferable to have a legislative mechanism such as the requirement of Section 13 that the more serious course of action should be followed. The fact that it may be rarely invoked is immaterial, but in its absence, the system is significantly one-sided.

4. While the Commission investigates and prosecutes specific complaints, the Board handles issues relating to practitioners' personal health or professional performance that may or may not relate to a patient complaint. When there is an identifiable complainant, the Board keeps them informed about the process, likely time-frames and the outcome. When the Board's processes are protracted (often as a result of legal challenges or the practitioner's failure to cooperate) every effort is made to keep the complainant apprised of progress, within the Board's confidentiality constraints. A requirement to provide complainants with progress reports would only serve to formalise existing practice.

5. As advised, the Board's Annual Report is tabled in Parliament. On 30 June 2010, the Board will cease to exist, though it will be replaced by a proposed Medical Council of NSW which will be part of the Health Professional Councils Authority. The governance arrangements will be a matter for the enabling legislation.

6. No.

7. No.

Question on Notice.

1. The Sunday Telegraph article of 21 February 2010 "*Foreign doctors fast-tracked*" opens with the statement "*Foreign doctors are being fast-tracked into Australia, bypassing the standard registration process despite statistics revealing they are responsible for half of all medical error and disciplinary cases*". The article goes on to indicate that "*Half the doctors suspended and deregistered in NSW since the beginning of 2009 gained their medical degrees overseas. Of Medical Tribunal cases heard last year, forty eight percent involved overseas-trained doctors while forty three percent of all currently suspended doctors qualified outside of Australia*".

   As I attempted to indicate in my evidence before the Committee, the article conflates two issues, namely the percentage of overseas-trained doctors who are the subject of disciplinary proceedings, and the fact that relatively recent initiatives have led to alternative pathways to registration for overseas-trained doctors, and that there may be some causal connection between these two issues.

   While the percentages referred to in the second quote above are substantially correct, very few of the overseas-trained doctors who have been the subject of disciplinary proceedings have come through these recently developed alternative pathways. For example, while seven of the fifteen doctors suspended in the period were overseas-trained (two with New Zealand qualifications, three with UK qualifications and two with Indian qualifications), none of them were registered on the basis of the so-called fast-tracking process. Similarly, of the twelve out of twenty four cases before the Medical Tribunal involving overseas-trained doctors, four held Indian qualifications, two Iraqi, one Turkish, one Sri-Lankan, one UK, one Egyptian, one Philippines and one Hong Kong, none were involved in the so-called fast-tracking process.

Yours sincerely

A E DIX
Registrar