

The Committee Manager
Committee on the Health Care Complaints Commission
Parliament House
Macquarie St
SYDNEY NSW 2000

9 April 2010

Dear Mr Keenan,

Re: Inquiry into the operation of the Health Care Complaints Act 1993

Thank you for the opportunity to participate in the public hearing of the Committee on the Health Care Complaints Commission on 4 March 2010 and for the opportunity to provide further information from the perspective of the NSW Physiotherapists Registration Board.

Responses to your questions follow.

- 1. Could you please explain to the Committee the role, if any, which the Board played in the development of the national scheme? What do you consider to be the key elements of the scheme in terms of its impact on the Board and physiotherapists generally?*

The role played by the NSW Physiotherapists Registration Board in developing the national scheme commenced during the consultative stage. Action primarily involved liaising with inter-state physiotherapist registration boards and contributing to joint responses and commentary on the series of discussion papers released and exposure draft of the national legislation. In addition some NSW

Physiotherapists Board members participated in face to face consultation sessions when opportunities were available.

At this stage planning for post 1 July 2010 involves the current NSW Physiotherapists Board members fulfilling two roles:

- i. As the NSW Board of the Physiotherapy Board of Australia (PBA) – undertaking delegated registration responsibilities.
- ii. As the NSW Physiotherapy Council –undertaking complaints handling and impairment responsibilities in consultation with the Health Care Complaints Commission.

Together these two future areas of responsibility effectively constitute the current responsibilities of the NSW Physiotherapists Board. The main differences will relate to ensuring consistency in approach with other states and territories. For registration responsibilities, working under the same legislation rather than different state and territory Acts, should assist consistency. Also national guidelines and procedures to be established by the PBA are expected to further enhance the ability of states and territory to take a consistent approach to registration matters. For complaints handling and impairment responsibilities, effective lines of communication will need to be established with the PBA. As the different state and territory regulatory bodies in physiotherapy have been meeting for some years and learning from each other's experiences, it is expected that consistency will be less difficult than it may be for some health professions.

The Australian Physiotherapy Council (APC) has been nominated as the body responsible for accreditation of physiotherapy education programs under the national scheme and as the APC has fulfilled this role for many years it is expected that current directions in accreditation of physiotherapy education programs will continue.

For physiotherapists at large the national scheme will facilitate mobility between states and reduce procedural requirements as they will not need to register

separately in each state and territory in which they wish to work, either short term or long term nor for inter-state study and conference attendances.

Other differences for physiotherapy in NSW include reporting of notifiable conduct, mandatory continuing professional education, student registration which has been extended to include reporting requirements by education providers regarding impairment and criminal records checks for all new registrants.

Having been appointed to the PBA I now also have a personal ongoing involvement in building the national scheme.

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

The operational relationship between the NSW Physiotherapists Board and the HCCC is primarily through the Complaints Screening Committee (CSC) of the Board. Over the years the CSC has developed a very good relationship with the HCCC representatives and in general the Board considers that the HCCC does excellent work in relation to investigation and prosecution.

The main areas that can be problematic on occasion include:

- i. Cases where there is a difference of view about how a complaint is to be handled, mostly where the CSC considers the matter should be investigated and the HCCC does not. While the Board can still pursue a matter that has been terminated by the HCCC by lodging a fresh complaint in its own right and making a written submission to the HCCC, this is a protracted administrative path and does not facilitate timely conclusion to the matter.
- ii. Cases where there is a serious criminal proceeding pending, the circumstances of which may cause the Board to consider whether or not to exercise its emergency powers for the protection of the health and safety of

the public, there can be a delay in notifying the Board of the outcome of the HCCC assessment and initial investigation. The Board cannot determine if there is a prima facie case for the exercise of emergency powers for the protection of the public without the relevant information from the HCCC. These very serious cases, such as sexual assault in the course of practising, require a high level of cooperation between the HCCC and the Board. Contacting the Board at the first available opportunity when sufficient evidence comes to hand would be of assistance. If this alert is left until the end of the investigation, valuable time elapses and the public may be at serious risk.

On occasion the NSW Physiotherapists Board has also requested the HCCC to participate in meetings or sessions to share information and discuss issues relevant to complaints handling. The HCCC is generally willing and responsive to these requests which the Board has appreciated.

- 3. In its submission, the NSW Medical Board expressed some concerns as to the degree of 'balance' between the HCCC and itself in terms of decision-making, particularly in respect of how to proceed in cases of alleged misconduct. Has the Physiotherapists Board had any similar experiences of co-regulation?*

The response to question 2 is also relevant to this question.

- 4. The Committee is particularly concerned with those bodies in NSW which exercise important functions with 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 you Board to oversight of its annual and other reports by a Parliamentary Committee?*

To date annual reports and other reports of the NSW Physiotherapists Board have been in the public domain and therefore available to Parliamentary Committees. Also given the strong inter-relationship between the Board and the HCCC in complaints handling any review of the HCCC implicitly involves the Board. Given the transparency of the Board's operations and annual reporting requirements in place, including expenditure and resources involved, it is not apparent that an additional oversight by a Parliamentary Committee specifically for a body such as the NSW Physiotherapist Board (or after 1 July 2010 the NSW Physiotherapy Council) would be warranted.

5. *The Board supports the proposal that, on requesting a response from an Area Health Service to an individual complaint, the Health Care Complaints Commission specifically request the Area Health Service information on any other complaints or practice-based concerns in respect of that practitioner, but suggests that this should be expanded to include registration bodies.*
- Has the Board experienced any difficulties in obtaining information as part of its own complaint-handling processes?*

Generally the NSW Physiotherapists Board and the HCCC jointly handle physiotherapy complaints and the HCCC has the primary investigative role. Consequently the Board's experience in eliciting information relates more to any difficulties the HCCC has in obtaining information rather than in its own right. Board enquiries are generally informed by completed investigations and matters considered by the Physiotherapy Standards Advisory Committee (PSAC) are generally not reliant on information held by Area Health Services.

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

No further comments.

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

No further comments.

I hope that the responses will be of assistance in the deliberations of the Committee.

Yours sincerely,

Anne Deans
President
NSW Physiotherapists Registration Board