Medical Council
OF*NEW*SOUTH*WALES

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17 December 2012

The Hon Leslie Williams MLA
Chair
Committee on the Health Care Complaints Commission
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

By Email: chccc@parliament.nsw.gov.au

[redacted]

Dear Mrs Williams,

Response to Questions on Notice – Inquiry into Health Care Complaints and Complaints Handling in NSW

I refer to the evidence of A/Professor Peter Procopis, President and Dr Greg Kesby, Deputy President of the Medical Council of NSW, who appeared before the Inquiry into Health Care Complaints and Complaints Handling in NSW on 19 November 2012.

The Medical Council of NSW (the Council) provides the following additional information in response to the questions on notice:

Areas where the Council believes legislative amendment would provide improvement to the regulatory environment in NSW

The National Registration and Accreditation Scheme (the Scheme) commenced operation on 1 July 2010. The *Health Practitioner Regulation National Law Act 2009* was first passed in Queensland and then enacted in each State and Territory with certain local variations. In NSW, the National Law was enacted with a different Part 8 which sets out the regulatory part of the Scheme in NSW.

Through the *Health Practitioner Regulation National (NSW)* and the *Health Care Complaints Act 1993,* the Council and Health Care Complaints Commission co-regulate complaints that concern a medical practitioner's health, conduct or professional performance or a medical student's health or conduct. In the other State and Territories, National Boards regulate such complaints with the assistance of the Australian Health Practitioner Regulation Agency, which provides administrative and other support to these National Boards (National Board Jurisdictions).

Whilst most aspects of the current arrangements work well, one area which causes the Council some difficulty concerns medical practitioners who are subject to conditions or undertakings imposed in a National Board Jurisdiction moving to NSW.

The convention that operates nationally is that the relevant State or Territory will monitor a practitioner's compliance with any conditions or undertakings when the practitioner practices in that State or Territory (irrespective of where the conditions or undertakings were first imposed.) When a practitioner subject to a condition or undertaking arising from a performance, conduct or health matter moves to NSW, the Council monitors that practitioner's compliance with the condition or undertaking.

Presently, the *Health Practitioner Regulation National Law Act 2009* as it operates in the National Board Jurisdictions does not permit the Council to amend or remove a condition or undertaking when review is indicated (either because the practitioner has complied with condition or undertaking or it is appropriate to reduce the frequency of a certain activity). In these circumstances, the practitioner must apply to the State or Territory where the conditions/undertakings were imposed for a review.

It would assist the Council when monitoring such practitioners if it could review, amend and remove conditions or undertakings when the practitioner moves to NSW. The Council is arguably in a more informed position than a National Board to consider any application by the practitioner for variation, or any need to remove, vary or amend the conditions or undertakings, in light of its experience and knowledge arising from its compliance monitoring of the practitioner. This approach is also preferable to the practitioner, rather than requiring him or her to make an application for review to the State or Territory where the conditions/undertakings were imposed, particularly if the practitioner has not practised in that jurisdiction for many months or years.

Information concerning applications made to the Council under the Government Information (Public Access) Act 2009

The Council is committed to the principles of the *Government Information (Public Access) Act 2009* (*GIPA Act)* and provides a range of publications, documents and information to the public free of charge through its website. This is part of the Council's open access and proactive release of information approach.

In accordance with section 7(3) of the *GIPA Act*, the Council conducted a review of its proactive release of information and modified its website to provide enhanced access to the Council's policies and guidelines and to publications held by related agencies. The Council also actively considers the publication of key documents on its website, when such documents are considered by the Council for endorsement.

Access to information held by the Council that is not available by searching its website can be accessed by contacting the Council. On receipt of such a request, staff of the Health Professional Councils Authority assess and determine whether the information is readily available, could be disclosed as part of a proactive release of information or could be disclosed through informal release.

On some occasions, and as a result of the Council's requirement to maintain confidentiality, the Council requires a formal access application to be made.

During the period 1 July 2011 to 30 June 2012, the Council received 10 formal access applications (three from the same applicant). This compared to two in the preceding financial year. Of these 10 formal access applications, one application was withdrawn, six were determined and three applications remained under consideration at the end of the reporting year. Of the six applications determined, access was granted in part in all six applications. Five of these applications were decided within the statutory time frame and one was decided beyond the statutory time frame by agreement with the applicant.

The reasons for the Council not granting access in full following a GIPA application are:

- on a number of occasions, the documents were captured by Schedule 1 to the *GIPA Act* with the result that there was a conclusive presumption against disclosure of information; or
- other considerations as outlined in the table to section 14 of the *GIPA Act* led to the conclusion that there were other public interest considerations against disclosure of the information.

During the period, two applicants sought a review of the Council's decision, with one review being made to the Information Commissioner and one to the Administrative Decisions Tribunal.

As advised during the evidence before the Inquiry, these matters are listed at Appendix 10 in the Medical Council's Annual Report 2012.

Thank you for providing the Council with an opportunity to provide these answers on notice. Please do not hesitate to me on 9879 2211 should you require clarification in relation to any of the matters raised in these answers.

Yours faithfully,

Ameer Tadros
Executive Office