

Submission
No 5

**INQUIRY INTO HEALTH CARE COMPLAINTS AND COMPLAINTS
HANDLING IN NSW**

Organisation: Medical Council of NSW

Name: Mr Ameer Tadros

Date Received: 3/02/2012

3 February 2012

The Hon Leslie Williams MLA
Chair
Committee on the Health Care Complaints Commission
Parliament House
Macquarie St
SYDNEY NSW 2000

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

Dear Mrs Williams,

Medical Council of NSW Submission - Inquiry into Health Care Complaints and Complaints Handling in NSW

I refer to your letter dated 1 December 2011 inviting the Medical Council of NSW (the Council) to make a submission to the Committee in relation to how complaints are handled in NSW.

The Council makes the following submission in relation to the two specific issues that are being considered by the Committee:

1. A comparative analysis of complaints lodged with the Health Care Complaints Commission by regional and metropolitan consumers, including the quantity and nature of complaints and consumer satisfaction.

The Council does not have a substantive submission to make in relation to the issue of regional and metropolitan consumers, noting that the data and analysis will be provided by the Health Care Complaints Commission (HCCC).

Consumer Satisfaction in the HCCC

In relation to the issue concerning consumer satisfaction in response to the HCCC, the Council notes the comments made by the HCCC Commissioner in the HCCC Annual Report 2010/2011. In particular, the Commissioner noted that in response to increasing complaint numbers, the HCCC has had to alter its practices and that this has resulted in an inevitable reduction in customer service.

The Council submits that the HCCC should receive adequate funding in order to ensure that it continues to carry out its legislative responsibilities, including the investigation and prosecution of serious complaints, without the pressure or bias that may be created by any budgetary constraints. Consumer satisfaction and

more importantly public protection, can only be assured if the HCCC is adequately funded and therefore adequately resourced.

Consumer Satisfaction in the Council

The Council wishes to outline its experience in relation to the quantity and nature of complaints that are referred to it and consumer satisfaction with the complaints management process. Complaints against medical practitioners in NSW are managed by the HCCC through co-regulation with the Council. Following assessment of a complaint by the HCCC and Council, a complaint can be referred to the Council to manage through its non-disciplinary Health or Performance pathways.

Quantity and Nature of Complaints

The Committee would be aware that the HCCC must investigate a complaint if, amongst other matters, it raises a significant issue of public health or safety, or if substantiated, would provide grounds for disciplinary action against the health practitioner. Many of the complaints received by the Council or the HCCC do not reach this threshold. In the 2010/2011 financial year, only 6% of the 1407 complaints that were received were investigated by the HCCC. If investigation is not warranted, the Council and the HCCC instead decide on the most suitable alternative response to the issues raised in the complaint. For example, if the complaint would not provide grounds for disciplinary action and the issues relate to the practitioner's unsatisfactory professional performance, then the complaint is referred to the Council to manage through its non-disciplinary Performance Program.

In the last financial year (2010/2011) 208 complaints were referred to the Council as performance matters. The Council conducted 61 Performance Interviews with practitioners and 26 Performance Assessments as well as two re-assessments. The Council's Performance Program is an effective mechanism to identify and assess any deficiencies in a medical practitioner's performance. It is a broad-based assessment and leads to early intervention and remediation. If deficiencies are identified through a performance assessment, conditions may be imposed on the practitioner's registration to remediate the practitioner or protect the public, or both.

Consumer Satisfaction

The Council has on occasions experienced difficulties in addressing complainant satisfaction when a complaint is referred to it to manage through its non-disciplinary performance pathway. Complainants may be dissatisfied, particularly if they believe strongly that their complaint requires investigation.

The Council would strongly support any initiative which resulted in further information being made available to consumers which outlined the role of the Council when a complaint is referred to it to manage. The Council has information available on its website concerning its non-disciplinary Performance and Health Programs, but it believes that more information should be made available in order to ensure consumers are appropriately informed of the Council's powers when dealing with a complaint.

The Council also notes the continued tension that exists between its duty to maintain confidentiality and its obligation to provide adequate information to complainants, following referral of a complaint to the Council.

The Council is required to maintain confidentiality and can only disclose information in certain circumstances. Whilst the Council can and does advise a complainant of the outcome of any complaint referred to it, the Council is limited in the amount of detail it can provide to the complainant. The situation may be further complicated when, for example, a practitioner is referred to the Council to deal with in its Performance pathway, and following further assessment of that complaint, it becomes apparent that the practitioner suffers from an impairment. On occasions the Council's processes may continue with further assessment and subsequent action taken in response to the practitioner's impairment, however the Council is unable to provide a complainant with information concerning this unrelated, but additional issue.

In the Council's experience, complainants can on occasions be dissatisfied with the amount of information provided to them following consideration of a complaint by the Council. The Council however advises complainants that they are entitled to access information from the Council pursuant to the *Government Information (Public Access) Act 2009* and this includes making a formal application to request specific information from the Council.

The Council notes that the HCCC as an investigative agency is exempt from many of the privacy principles that arise in the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

2. Consumer awareness and understanding of the complaint handling systems and processes available to them both within the hospital system and in relation to external systems.

The total number of complaints made against medical practitioners in NSW over the past six years has remained relatively constant. There has, however, been a 10% increase in the 2010/2011 financial year as compared to the previous year. This appears to indicate that in NSW, consumers are aware of the complaint handling system and are availing themselves of the option to make a complaint against medical practitioners.

Information is available through the Council's and the HCCC's website in relation to the complaint handling process.

Mandatory Reporting in NSW

The Council notes however that following the commencement of the National Registration and Accreditation Scheme on 1 July 2010, some confusion exists with the obligations arising from mandatory reporting. The confusion arises from a lack of understanding by practitioners, employers and universities about the threshold that must be reached prior to the obligation arising to report notifiable conduct as defined in the *Health Practitioner Regulation National Law (NSW)*. This has led to notifications/complaints being made which do not necessarily meet the threshold for reporting notifiable conduct.

Adding to the confusion, a practitioner, employer or university in NSW discharges the relevant obligation to report notifiable conduct by making the complaint to the Australian Health Practitioner Regulation Agency (AHPRA). In NSW, AHPRA does not deal with complaint matters and only deals with matters relating to a practitioner's registration, or with advertising breaches or holding out prosecutions.

The Council's Powers

Whilst the Council submits that consumers are generally aware and understand the complaint handling system and processes in NSW, some confusion remains with respect to the role of the Council when a complaint is referred to it following assessment with the HCCC. Some consumers incorrectly believe that the Council is investigating their complaint. Again, the Council would welcome any initiatives which resulted in further information being made available to consumers which outlined the role of the Council when a complaint is referred to it to manage.

Thank you for providing the Council with the opportunity to make a submission.

Please do not hesitate to contact the Medical Council's Executive Officer, Ameer Tadros, on 9879 2211, should you require clarification in relation to any of the matters raised in this submission.

Yours faithfully,



Ameer Tadros
Executive Officer