Submission No 8

THE PROMOTION OF FALSE OR MISLEADING HEALTH-RELATED INFORMATION OR PRACTICES

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Via NSW Parliament Website Upload
Committee on the Health Care Complaints Commission (HCCC)
Parliament House
Macquarie St
Sydney
NSW 2000

Dear Honourable Members of the Committee,

INQUIRY INTO THE PROMOTION OF FALSE OR MISLEADING HEALTH-RELATED INFORMATION OR PRACTICES

I wish to make an individual submission as follows:

Administrative malfeasance through false or misleading information

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Summary of Purpose:

1. False and misleading information, causing challenges in the health care professions, is occurring on multiple levels, placing patients at risk of harm instead of protecting them. Such misleading information impacting health care outcomes is not necessarily restricted to non Therapeutic Goods Administration (TGA) registered products.
2. They include alleged non/mis/malfeasance matters in relationships between practitioners, hospital administrators, the regulation of their practice and also business entities in both public and private sectors.
3. NSW Health practices in the management challenges of privatised clinics within public hospitals have been long entrenched. Some clinics operate with great success whilst others flounder and breach the complex rules which then impact on patient outcomes - and also those of practitioners.
4. The model of business has long-term implications for human rights breaches against International Medical Graduates employed on non-immigrant visas and even on some Australian doctors.

5. College practices and alleged malfeasance are at present not accountable as Australian Specialty Medical Colleges are all private companies as is the Australian Medical Council Pty Ltd (AMC).

TERMS OF REFERENCE

The relevant terms are highlighted in ***bold italics*** below.

That the Committee on the Health Care Complaints Commission inquire into and report on possible measures to address the promotion of unscientific health-related information or practices which may be detrimental to individual or public health. The Inquiry will focus on individuals who are not recognised health practitioners, and organisations that are not recognised health service providers.

The Committee will have particular regard to:

(a) The publication and/or dissemination of false or misleading health-related information that may cause general community mistrust of, or anxiety toward, accepted medical practice;

(b) The publication and/or dissemination of information that encourages individuals or the public to unsafely refuse preventative health measures, medical treatments, or cures;

(c) the promotion of health-related activities and/or provision of treatment that departs from accepted medical practice which may be harmful to individual or public health;

(d) the adequacy of the powers of the Health Care Complaints Commission to investigate such organisations or individuals;

(e) the capacity, appropriateness, and effectiveness of the Health Care Complaints Commission to take enforcement action against such organisations or individuals; and

(f) any other related matter

INTRODUCTION:

"*Hypocrisy, the most protected of vices." Molière*

False or erroneous information generated at source by any party in healthcare matters has impact on wide ranging general outcomes for the general populace at all levels. For example, misinformation generated by non-regulated health practitioners is a matter of concern which impact on matters of public interest. This may be defined as the 'alternative health' camp.

This inquiry has presumably been set up principally for the purpose of interrogating these matters.

On the opposing side, Civil Liberties movements/individuals, fearing that draconian legislative reform may occur as a result of this Inquiry, have set up an ongoing online petition[1].

It is becoming increasingly clear that misinformation in the 'system' related to matters may also be generated by the 'system' itself – e.g. the pharmaceutical industry – in protecting their vested interests[2]. Hence, in many global

jurisdictions, clear guidelines have been set up for stakeholders' conflicts of interests to be publicly disclosed while local practices remain inconsistent.

The way data is presented by the Bureau of Health Statistics[3] may be of alarm and critics have stated that personalised issues should be examined in broader perspectives than the raw figures alone.

One field of continuing controversy is in the non evidence-based management of patients with chronic diseases including advanced cancer. Such alleged misinformation is generally thought to be generated and propagated by persons outside 'the establishment' and usually vehemently opposed by mainstream practitioners – i.e. Australian Health Practitioner Regulation Agency (AHPRA) Medical Board registered specialists and other interested stake holders.

Another is, for example, pioneering surgical techniques (the art and craft of surgery) for which [redacted] of Melbourne[4] has been reputedly falsely accused of during his numerous *successful* treatments of patients. This has resulted in onerous conditions being applied to his practice by AHPRA.

In NSW, as the [redacted] case is under a judicial process it could not be discussed further insofar as to make the Committee aware of its existence.

The case of Australia-born and qualified [redacted] is even more tragic with allegedly fabricated scenarios to prove incompetence at Intern level during her period in Victoria. Several years after she had obtained Full Registration in Greece and had been practising at an exceptional standard in a training post in Athens, she repeated her internship in QLD with exemplary reports and yet was allegedly victimised, again with false allegations.

Historically, in WA, [redacted], appears to have suicided after indefensible false accusations against her by Medicare investigators – as depicted by her spouse, now deceased [redacted].

The above examples are merely some of the Australian cases but it is not clearly realised that the 'establishment' may also generate and propagate misinformation on health matters which is unrelated to health products or health interventions - but instead, health practitioners themselves.

This may be generated for the purposes of turf protection (usually using a medical specialist college), maliciously harming a particular innocent individual (and thus, potentially the public) and the protection of the vested interests of those in the 'establishment'[9]. There may be other reasons.

The administration and management of the regulation of medical practice in Australia is now under scrutiny with the [redacted] appearing to be a major surrogate marker of entrenched dysfunction.

This debacle has left a legacy of hope for concealed matters which may impact on healthcare to be raised, exposed and debated.

Hence, for example, the issue of misinformation being generated by 'the establishment' (through non-regulated bureaucrats) leading to negative impact on the availability of urban and regional medical care deserves to be carefully interrogated.

Recent evidence presented before the still ongoing Victorian Parliamentary Inquiry on the performance of AHPRA reveals serious concerns of standards of practice in Tribunal hearings in both Victoria and Queensland. There is no reason why the same concerns of alleged miscarriage of justice does not occur in NSW as careful scrutiny of the NSW Medical Council decisions in the public domain may suggest.

The opinion of Australian Medical Colleges, is often relied upon as fact – but the trust has been shown to be misplaced[11]. This has been entrenched and all alleged abuse of power of Medical Specialist Colleges remain unaccountable in numerous instances. Because Medial Colleges are private companies, their internal policies and actions are not subject to independent scrutiny except by the regulator of their actions – i.e. the Australia Securities and Investment Commission (ASIC).

In 2008, because of massive and widespread dysfunction in NSW Health, the Garling Inquiry was conducted. As its scope was limited, the issue of misinformation in healthcare management was not fully addressed.

In 2010, in Cairns, the case of [redacted] was brought to light in Australian Parliament by the Hon Mr Warren Entsch, MP, Opposition Chief Whip. With the Hon Mr Bruce Scott, MP, a private member's bill was debated in Parliament[12]. This led to the Minister for Health and Ageing, the Hon Ms Nicola Noxon, MP, to announce a Parliamentary Inquiry "The Registration Processes and Support for Overseas Trained Doctors" in November 2010. This resulted in the Inquiry and thence, a Committee Report, "Lost in the Labyrinth" on 19 March 2012[13].

Again, the scope of this Inquiry was limited and though many submissions suggesting egregious conduct of the 'establishment' were accepted, individual cases were not examined. Victims had tendered good evidence in the public domain to implicate various perpetrators. The author made submission no. 52 and provided confidential evidence of alleged misinformation being supplied by the Royal Australasian College of Physicians (RACP) in the registration process by the NSW Medical Board in his application for Specialist Registration[14].

Subsequently, this misinformation was used against him when he uncovered attempted Medicare fraud using his Provider Number: [redacted] whilst employed by NSW Health on a 457 Visa in 2006 in a rural hospital, the Tweed Hospital[15].

This case together with others, illustrates with strong evidence the hypothesis that irregular harmful practices in healthcare regulation and management which depart from the rule of law are alive and well within NSW Health, the NSW Medical Board and the RACP. It appears that 'guilt' once proclaimed (even when it is flawed) sticks for life to a health professional - not only nationally, but internationally. These have direct or indirect impact on the public and the availability of their health care and can indeed be harmful.

During a witness interview during the Australian Parliamentary Inquiry on the Registration and Support of Overseas Trained Doctors, Dr J Alexander, CEO of the RACP gave witness evidence that the college considered communication skills assessment included that of 'getting along' with colleagues[16]. However the RACP's own published internal guidance on assessment discounted the assessment of a person's character or personality. This was presumably asserted to justify the entrenched bullying conduct of the RACP.

SUBMISSION:

This submission details a case study of a Specialist Physician on a NSW Health Sponsored 457 Visa in a rural hospital who was being utilised as an instrument to double dip[17].

Comprehensive evidence is presented to illustrate the point of how misinformation is generated and propagated by various parties and how this was allegedly mismanaged.

The work allocated to the Specialist was principally in the privatised clinic and many of the Clinical Director's clinical trial patients from another practice in Queensland were directed to be followed up on single occasions when the Director was on holidays overseas.

The Staff Specialist, who had never seen these patients previously, was not formally included as a sub-investigator in these pharmaceutical company funded trials. These cancer patients travelled more than 200 km each way for their follow up when they could have been seen by a locum or stand in practitioner in Toowoomba.

When the Specialist discreetly cooperated with Medicare, NSW Health secretly and unethically (and breaching the Privacy Act) obtained uncorroborated information about him. This misinformation was then used to generate false allegations of a *grave nature* against the practitioner – to an inflated Level 2 rating of risk.

This necessitated mandatory reporting to the NSW Medical Board and the denial of Australian Medical Association (AMA)/Australian Salaried Medical Officers' Federation (ASMOF) legal support.

Due process then followed which involved the NSW Medical Board consulting with the HCCC. The case (which carried misinformation which the HCCC had relied on) was referred back to the NSW Medical Board and an attempted progression to impose "Performance Conditions" on the practitioner's registration ensued.

The Specialist had removed his name from the Register (when he had no right of work in NSW, having been offered a locum in Queensland). Because of this technicality, performance issues could not be pursued.

The QLD locum was short-lived as policy did not allow a practitioner under any type of investigation to continue working.

The NSW Medical Board refused the Specialist a Certificate of Good Standing despite multiple protests that the investigation was flawed due to false information being supplied by NSW Health. No further independent investigation took place.

Subpoena of documents from Ballarat Base Hospital, Victoria, where the misinformation had originated (and 'settled' privately via a Confidential Deed signed under duress) disclosed that the Specialist had been appointed in favour of the Director of Oncology of the Tweed Hospital four years earlier.

A complaint by the Specialist to the HCCC o [redacted] was dismissed as it 'was not related to a clinical matter.' A similar complaint to AHPRA Victoria about the alleged unprofessional (infamous) conduct of [redacted] of the RACP was dismissed without reasons. Yet, recent action by AHPRA WA on a Radiologist was for 'infamous conduct,' which indicates inconsistency of the disciplinary processes on a national basis.

The matter remains unresolved till today with continued denial by authorities of its alleged malfeasant nature.

In the submitter's opinion, the matter of the case study highlights alleged systemic dysfunction and corruption in processes within the NSW Medical Board, NSW Health and the RACP and outside the jurisdiction of the Committee, in Ballarat Health Services, Victoria[18] .

RECOMMENDATIONS:

1. Consider a Royal Commission on the matter of the management of misinformation in health care and administration.
2. Reforms to force the Australian Medical Council (AMC) and all its delegated assessing specialist colleges to be fully accountable in law.
3. Consultation with the Council of Australian Governments Health Ministers, AHPRA, the HCCC and the NSW Medical Council to reform and standardise national policies on dealing with false and fraudulent

complaints by both public and private entities (e.g. the Health Ombudsman Bill 2013 of QLD).

4. Specific State and Commonwealth legislative amendments to make it an offence for dishonest administrative conduct in both public and private sector entities which are related to any health practice and the regulation of these.

If you need to contact me, please email me on [redacted] or ring my mobile on [redacted].

Yours sincerely,

[redacted]

Leong-Fook Ng

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[redacted]