Submission

No 13

INQUIRY INTO HEALTH CARE COMPLAINTS AND COMPLAINTS HANDLING IN NSW

Name: Mr Mark Loewenthal

Date Received: 14/02/2012

[redacted]

3 February 2012

Committee on the Health Care Complaints Commission
Parliament House
Macquarie St
Sydney NSW 2000

Dear Sir/Madam

The opinions expressed in this submission are entirely my own are not made in any capacity as a representative of my employer, Hunter New England Local Health District.

I am the director of the Immunology and Infectious Diseases Unit at the John Hunter Hospital, a medium sided medical unit, probably the second largest of its type in NSW. As such, my role is much greater than that of a doctor in private practice. By far my most valuable resource is my staff of healthcare workers. It is my responsibility for them to develop their full potential so that they can serve the public. There are many reasons why our workplace needs to be a place of trust and safety for staff as well as patients. It is with this in mind that I make the following submission. Enclosed are a number of observations that I have made over several years of being indirectly involved with the HCCC.

I am happy to be contacted in writing, email, or by telephone.

Yours Faithfully

Mark R Loewenthal

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Summary:

1. The HCCC is used by commercial and professional rivals to harm their opponents.
2. The HCCC's investigative *"style"* is interfering with our aims to reduce healthcare associated error by encouraging reporting.
3. The mechanism by which patients and clients are informed about healthcare workers who are under investigation open to misinterpretation.

1. The HCCC is used by commercial and professional rivals to harm their opponents.

Healthcare, especially amongst the procedural and investigative specialties has become very businesslike during my practicing lifetime. It also contains many egos. It is widely recognized that the HCCC is the most effective and risk free method of nobbling one's opponents.

Suggested action:

I hope that the committee will give consideration to *explicitly* investigating the benefit to the complainant of an adverse finding by the HCCC when that complainant is a competitor.

2. The HCCC's investigative "style" is interfering with our aims to reduce healthcare related error.

The lack of trust engendered by the HCCC's *style* prevents effective error reporting. This means that errors are less likely to be detected and acted upon before they cause such clear harm that they are obvious to all. Clearly the HCCC needs to carry out investigations, my comments refer to its *style*. I would suggest that committee members read the initial documentation sent to healthcare professionals under investigation. Any reasonable person would find the wording in the documentation to be unambiguously legalistic, threatening, and truculent.

Our model of error detection and reduction takes a great deal from the aerospace industry. Our aim is to put systems in place that detect errors when they occur, prevent harm from error, and reduce future error. We aim to create an environment in which "the detection of error is celebrated", not punished. Increasingly I have found that fear of investigation by the HCCC is explicitly stated as a reason for lack of meaningful error reporting. We have a series of mechanisms for error reporting including IIMS reports, audits, morbidity and mortality reviews. All of these depend on trust and the possibility of reporting without being harmed. "Near misses" that if acted upon would prevent harm, go unreported unless trust exists. This combines with an active Clinical Governance Unit with the means to conduct independent investigations as well as root cause analyses.

Suggested Actions:

1. The *"style"* of documentation used to inform healthcare worker and to gain their cooperation needs complete revision.
2. A very clear distinction needs to be made at the start of an investigation between deliberate acts and errors. Variations in the scope of practice initially need to be put into the error category no matter how profitable they may be. Certainly some things that appeared to be errors will turn out to be deliberate acts but that can be corrected down the track. In all

cases in which error is suspected a much less threatening style needs to be investigated. Included in a "non-threatening" style is explicit advice on the aim of the investigation. This is both to give an explanation to the complainant and to prevent future harm. Not to punish the healthcare professional.

3. Investigators and staff at the HCCC including the commissioner need to receive training in modern methods of detection, and reduction of errors committed by experts along the lines of the Human Factors Research & Technology Division of NASA as well as the Institutes of Medicine.
4. The committee and the Commission need to be aware that they do not operate in a vacuum and that their actions including their style of communication and conduct impact the entire health system.

3. The mechanism by which patients and clients are informed about healthcare workers who are investigation needs to be revised.

I was advised by one of my colleagues that he was under investigation by the HCCC. 26 of his patients had received written notification that he was under investigation. The letters were otherwise totally uninformative. A patient accessing the HCCC web page will see that prosecutions have just been obtained in a number of matters. These include a prosecution for the possession of child pornography and another for transmission of hepatitis C to number of patients by reuse of injecting equipment. What conclusions would a reasonable person draw from this? Surely this is completely unfair.

Suggested actions:

(1) Careful consideration needs to be given before sending letters out to clients and patients. Letters should make it clear that the healthcare profession is not being investigated for sexual misconduct, deliberately harming patients, or fraud unless this is the case.

(2) Patients who received a letter when the healthcare professional was initially investigated should be informed of the outcome of the investigation especially if the professional is exonerated.