Submission

No 11

INQUIRY INTO HEALTH CARE COMPLAINTS AND COMPLAINTS HANDLING IN NSW

Organisation: Australian Medical Association (NSW) Limited

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Parliament of New South Wales
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Committee on the Health Care Complaints Commission

Inquiry into Health Care Complaints and Complaints Handling in New South Wales

Submission by

Australian Medical Association (NSW) Limited

1. Introduction

AMA is a medico-political organisation that represents over eight thousand doctors in training, career medical officers, staff specialists, visiting medical officers and specialists and general practitioners in private practice.

AMA (NSW) welcomes the opportunity to make a submission on the important issue of Health Care complaints handling in New South Wales and the operation of the HCCC.

Any questions regarding this submission should be directed to:

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Introduction

AMA (NSW) does occasionally assist doctors with complaints being investigated by the HCCC. We also frequently discuss the issue of HCCC investigations with solicitors who assist member doctors with HCCC investigations, and likewise with medical defence organisations.

Submission

General Comments

Firstly, we would say that generally, the HCCC has expert, specialised knowledge of dealing with complaints in the health care sector, and we are therefore supportive of its continued operation as a separate entity from AHPRA. Many of the concerns AMA (NSW) has in relation to the operation of the HCCC may stem from the fact that the Commission must be adequately resourced to ensure that it continues to function well. We are therefore supportive of any increases in resources to ensure that the Commission can continue to operate in a highly effective manner.

Comments on the Terms of Reference specifically

AMA (NSW) welcomes any analysis of how the HCCC is operating in terms of strengths and weaknesses. We are aware (by way of experience rather than statistical information) of differences between the number and type of complaints received from patients in metropolitan areas compared to regional areas. We would surmise that analysis of data may reveal differences in the nature of complaints about inner city GPs and outer metropolitan/regional GPs, and that there may also be differences between complaints about "corporate" general practices compared to smaller or solo practices.

In relation to rating consumer satisfaction with the health care complaints system in NSW, it would be interesting in our view to analyse whether the lack of conciliation offered may have an effect on consumer satisfaction with the processes. It is our understanding that conciliation is not generally occurring, and we are supportive of

the resolution model, as it provides patients with an opportunity to discuss their concerns directly with the doctor, and have an opportunity where appropriate for the doctor to apologise. We note in the public system this may occur through open disclosure processes at hospitals and therefore may not be useful in public hospital complaints.

AMA (NSW) receives occasional inquiries regarding complaints about doctors, however it appears from the number of complaints received from patients in NSW, that generally awareness of the processes available is high. Most hospitals have well documented complaints processes, and employ specialised patient liaison officers to manage complaints, and it is therefore our view that patients are well advised on the systems available to handle their concerns in the public sector.

AMA (NSW) and medical defence organisations generally advise any member of the public, or doctors inquiring who have received a complaint or concern from the patient, to try and address the issue directly and resolve informally if possible, as this will often result in the patient feeling that their concern has been addressed without the need for formal or lengthy processes.

Comments on the Operation of the Commission (outside of Terms of Reference)

We note that the following comments fall outside the terms of reference, however take the opportunity to comment on the operation of the Commission generally.

A. Consistency of Approach

We are now in a position to comment on how complaints handling occurs in NSW compared to other states, where AHPRA is handling complaints. It is our view that the HCCC has a much more consistent approach to complaints handling than AHPRA at this stage. For example, in some states AHPRA is releasing a copy of the complaint to the doctor, in other states the complaint is being paraphrased rather than provided to the doctor. Suspension processes are also being used inappropriately by AHPRA, often because their staff are not knowledgeable enough to know when a doctor should be suspended, and therefore there are inconsistences in the types of

matters where doctors are suspended. In NSW generally we observe that suspension powers are not used unnecessarily (although we note our observation is that more doctors are being suspended than have been in the past by the Medical Council) and there is a consistency in the types of complaints/concerns where doctors are suspended from practice.

We note further that the HCCC and Medical Council generally consult with other stakeholders (AMA, medical defence organisations) which is a useful process for both parties, where AHPRA does not in complaints handling processes.

We note that many of these concerns have been ventilated in the Senate Inquiry into AHPRA, however we believe it is worthwhile to compare the operations of the HCCC with AHPRA, as we believe that the HCCC is operating better than AHPRA is, in these areas.

B. Delay- stage between investigation and prosecution

We note that there continues to be a delay between the conclusion of the investigation phase and the decision whether to prosecute or not. The assessment phase is conducted relatively quickly, and investigation can be slow (which can be dependent on the nature of the complaint) however the main delay appears to be at the next stage. We are aware of one matter which eventually proceeded to a Professional Standards Committee hearing, which took 18 months to make it to hearing, from the date that the investigation is concluded.

Further, our information suggests that despite the role of Director of Proceedings (see section 90B of the Health Care Complaints Act NSW 1993) being an independent role, established to make an independent decision as to whether the matter should be prosecuted, following the Walker Inquiry, we are unaware of one matter where a complaint has not been prosecuted. We are also aware that many matters are sent back to the investigation stage by the Director in order that a decision may then be made (on the basis of the stronger evidence) that the matter be prosecuted. If it is the case that once a matter is investigated, it is close to inevitable that the matter

will be prosecuted, then the delay between the conclusion of investigation and the decision to prosecute or not, should be reduced.

It is both to the detriment of the doctor, and the patient, to have matters drawn out over a long period of time. It also means that witnesses may not have good recall of events, if the matter is heard some 2 years after the complaint was first lodged. In our submission, both consumers and doctors are being disadvantaged by the length of this process, and the process should be streamlined or better resourced to reduce such delays.

C. Clinical matters being prosecuted at Professional Standards Committee level

We note that the Health Practitioner Regulation National Law (NSW) - Sect 139B clearly defines unsatisfactory professional conduct as, amongst other things,

"Conduct that demonstrates the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of the practitioner's profession is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience."

It is the view of AMA (NSW) that there are matters proceeding to Professional Standards Committee (PSC) level which are not, in accordance with the above definition, unsatisfactory professional conduct, and accordingly should not be treated as disciplinary matters but rather would be better suited, in some cases at least, to be referred to the Medical Council as part of the Performance Program.

Many of the matters being referred to the PSC level are at best civil matters, and do not involve significant departures from accepted standards. Examples may include known complication issues, simple errors, or communication issues.

AMA (NSW) submits that it is not in the public interest for minor matters to be prosecuted, particularly where performance review mechanisms may be more

appropriate, or where there is double handling of matters (for example, the hospital is also investigating).

D. Section 34A of the Health Care Complaints Act misuse

AMA (NSW) is aware that Section 34A of the Act is being used in inappropriate circumstances. Given the nature of the power (the requirement to attend the interview, and the fact that questions must be answered, with answers able to be used in disciplinary matters) AMA NSW would contend that the power should be used sparingly.

However, we are aware of one matter where the power was used in circumstances where the doctor was cooperative and responsive. In addition there were no exceptional circumstances in the matter. We can only surmise that the power is being used to obtain admissions, or to attack the credibility of the doctor by asserting a prior inconsistent statement was made at the compulsory interview. AMA (NSW) is therefore concerned that the exercise of the power in accordance with Section 34A of the Act is occurring inappropriately.

Conclusion

AMA (NSW) is grateful for the opportunity to make a submission to the Inquiry, and welcomes the opportunity to provide further information if required.

Dated 7th February 2012.