# Medical Council OF NEW SOUTH WALES

## Annual Report 2011

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**Access to the Medical Council of New South Wales**


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# > about the **Council**

The Medical Council of New South Wales (the Council) was established on 1 July 2010 with the commencement of the National Registration and Accreditation Scheme (the Scheme) for health professionals. Through the Scheme, responsibility for registering health practitioners and accrediting educational programs, transferred from State and Territory authorities to National Boards. Health professionals now no longer need to hold multiple registrations in the same profession and uniform registration standards apply across all jurisdictions. The National Boards are supported by the Australian Health Practitioner Regulation Agency (AHPRA) which has an office in each State and Territory, including New South Wales (NSW).

NSW did not adopt the regulatory part of the Scheme which handles complaints and notifications about practitioners. Instead, the co-regulatory environment in NSW was maintained and the NSW Medical Board was replaced by the Council. The Council, together with the Health Care Complaints Commission (HCCC), continue to be responsible for dealing with complaints about the professional performance, conduct and health of medical practitioners who practise in NSW.

# > aims and **objectives**

The Council is a statutory body established pursuant to the *Health Practitioner Regulation National Law (NSW)* to exercise the powers and functions imposed on it by the Law.

The object of the *Health Practitioner Regulation National Law (NSW)* (the Law), which created the Council, is to establish the National Registration and Accreditation Scheme. The objects of the Scheme are:

a. to provide for the protection of the public by ensuring that only health practitioners, who are suitably trained and qualified to practise in a competent and ethical manner, are registered;
b. to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction;
c. to facilitate the provision of high quality education and training of health practitioners;
d. to facilitate the rigorous and responsive assessment of overseas-trained health practitioners;
e. to facilitate access to services provided by health practitioners in accordance with the public interest;
f. to enable the continuous development of a flexible, responsive and sustainable Australian health workforce;
g. to enable innovation in the education of, and service delivery by, health practitioners.

The Council is one of 10 NSW Health Professional Councils established under the *Health Practitioner Regulation National Law (NSW)* to manage complaints about the performance, conduct and health of practitioners who are registered under the Law and who practise in NSW. The staff of the Health Professional Councils Authority (HPCA) provides secretariat support to the 10 NSW Health Professional Councils who administer the NSW Health Professional Regulatory Scheme.

Medical Council
OF NEW SOUTH WALES

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22 November 2011

The Hon. Jillian Skinner MP
Minister for Health
Minister for Medical Research
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

**CONFIDENTIAL**

Dear Minister,

I have the pleasure of forwarding to you the first Annual Report of the Medical Council of New South Wales for the year ending 30 June 2011.

The report has been prepared in accordance with the provisions of the *Annual Reports (Statutory Bodies) Act 1984* and the *Public Finance and Audit Act 1983*.

The Council was granted a one month extension of time to 30 November 2011 to submit this Report under section 13 (3) of the *Annual Reports (Statutory Bodies) Act 1984*. The approval was given on the understanding that this is the Council's first report since the establishment of the National Registration and Accreditation Scheme, which has impacted the timely submission of the financial statements and annual report.

I trust that the Report clearly demonstrates the Medical Council's commitment to ensuring that it meets its charter of protecting the people of NSW through efficient and effective administration of the *Health Practitioner Regulation National Law (NSW)*.

Yours sincerely,

P G Procopis
President

Enclosure

# > president's **report**

More than a year has passed since national registration commenced on 1 July 2010. At the same time, the Medical Council of New South Wales (the Council) replaced the NSW Medical Board as the body responsible for regulatory activities in NSW concerning a medical practitioner's performance, health or conduct.

The unique co-regulatory environment in NSW has been maintained through the continued relationship between the Council and the Health Care Complaints Commission (HCCC) with respect to the assessment and management of complaints. This relationship continues to be effective and to uphold the public's confidence in the complaint handling functions of both agencies.

Since 1 July 2010, the national Medical Board of Australia, through its administrative agency, the Australian Health Practitioner Regulation Agency (AHPRA), has been responsible for the registration of medical practitioners in Australia and the accreditation of courses for study.

The Council has forged a strong working relationship with the Medical Board of Australia. Two members of the Council are also members of this National Board. This provides a valuable and effective means of communicating to the National Board the views of the Council, on behalf of NSW registrants. The National Board has commenced the task of developing consistent standards and policies to govern the practice of medicine throughout Australia, and the Council has been involved in communicating its views in relation to the adoption and implementation of these policies.

This relationship is mirrored at state level in the liaison between the Council, through its administrative staff of the Health Professional Councils Authority (HPCA), and the staff at the AHPRA. Both organisations work closely in order to ensure effective communication and the exchange of information concerning registration and regulatory matters in a timely and efficient manner.

While the Council has seen some changes in its administrative structure since the commencement of national registration, the transition has been relatively seamless with regard to the management of regulatory matters in NSW.

The introduction of the *Health Practitioner Regulation National Law (NSW)* on 1 July 2010 has seen many of the procedures remain unchanged for dealing with a performance, health or conduct complaint. In NSW, the more serious complaints are investigated and, if appropriate, prosecuted by the HCCC. Complaints that concern a medical practitioner's performance or health are managed through the non-disciplinary pathways available to the Council, including Performance Assessments and Impaired Registrants Panels. The Council remains strongly committed to both the Health Program and the Performance Program, which are vital tools in maintaining professional standards, through remedial, non-punitive and broad-based assessment and review.

The year has seen a steady increase in the activity of the Council with a greater number of mandatory reports made in relation to medical practitioners as compared to last year. This increase indicates that health professionals, employers and education providers are all aware of their obligations to report notifiable conduct. This advances public protection by ensuring that the Council can take appropriate action in response to any issues of concern identified as a result of a mandatory notification.

There has also been an increase in the number of times the Council has been required to exercise its power to take immediate action against medical practitioners, either by suspending or imposing conditions on their registration. This reflects the Council's view that, where necessary, early interim action should be taken to protect the health or safety of the public, while the complaint is investigated or otherwise managed by the Council or the HCCC.

While medical students were registered in NSW prior to the commencement of the national scheme, medical students are now registered nationally by the AHPRA. During the year, the Council has seen a number of health notifications made in relation to students and is managing their health issues through its non-disciplinary Health Program.

Following the commencement of national registration, the Council has experienced a change in the way it performs its functions although many of its procedures have remained unchanged. The Council has welcomed a new Executive Officer and, more recently, a new Medical Director to meet the challenges of a new era. In spite of the level of change experienced during the reporting year, the work of the Council continues to be conducted with a high level of proficiency across a spectrum of difficult and complex matters.

The Council looks forward to continuing to maintain high standards of medical practice in NSW and improving the regulatory environment for medical practitioners and the public in NSW.

*Peter Procopis*
*President*

# > year in **summary**

The following table gives an overview of the Medical Council's activities in the three major areas of Professional Conduct, Performance and Health, and a three-year historical comparison.

| | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|
| **Professional Conduct** | | | |
| Complaints assessed | 1268 | 1279 | 1407 |
| Professional Standards Committees concluded | 18 | 16 | 14 |
| Medical Tribunals concluded | 19 | 19 | 18 |
| Counselling Interviews finalised | 18 | 25 | 30 |
| Section 66 (*Medical Practice Act*) Inquiries conducted (including s66AB proceedings) | 45 | 47 | 11 |
| Section 150 proceedings (including s150A and s150C proceedings) | - | - | 49 |
| **Health** | | | |
| Medical Practitioners in Health Program | 146 | 122 | 111 |
| Entrants to Program | 30 | 28 | 29 |
| Impaired Registrants Panels convened | 61 | 43 | 46 |
| Council Review Interviews | 276 | 263 | 242 |
| **Performance** | | | |
| Medical Practitioners in Performance Program | 54 | 65 | 79 |
| Entrants to Program | 24 | 32 | 31 |
| Assessments concluded | 19 | 20 | 26 |
| Performance Review Panels concluded | 11 | 10 | 11 |
| Retired as a result of participation | 5 | 5 | 4 |
| Performance Interviews concluded | 43 | 67 | 32 |
| Exit from Program | 15 | 21 | 17 |

# > structure of the **medical council** and the health professional councils authority

## Membership of the Medical Council of NSW

The Medical Council of New South Wales (the Council) consists of 20 part-time members appointed by the Governor.

Members of the Council, their qualifications, term of appointment and nominating body for the period 1 July 2010 to 30 June 2011 are listed below. During this period, six ordinary meetings and one extraordinary meeting were held. Attendances at these Council Meetings are recorded in square brackets.

**Clinical Associate Professor Peter George Procopis** AM, President, MBBS (Sydney), FRACP, Royal Australasian College of Physicians nominee (current term: 1.7.2010 – 30.6.2012) [6]

**Dr Gregory John Kesby,** Deputy President, MBBS (UNSW), BSc Hons (UNSW), PhD (Cambridge), FRANZCOG, DDU, CMFM, Royal Australian and New Zealand College of Obstetricians and Gynaecologists nominee (current term: 1.7.2010 – 30.6.2012) [6]

**Dr Stephen Adelstein,** MB BCh (Wits), PhD (Sydney), FRACP, FRCPA, Royal College of Pathologists of Australasia nominee (current term: 1.7.2010 – 30.6.2012) [5]

**Professor Belinda Bennett,** B Ec. LLB (Macquarie), LLM SJD (Wisconsin), GAICD, Legal Member nominated by the Minister (current term: 1.7.2010 – 30.6.2012) [6]

**Mr Antony Carpentieri,** LLB (UTS), Ministerial nominee (current term: 1.7.2010 – 30.6.2012) [6]

**Dr Kerry Chant,** MBBS (UNSW), FAFPHM, MHA (UNSW), MPH (UNSW), Department of Health nominee (current term: 1.7.2010 – 30.6.2012) [3]

**Mr Michael Christodoulou** AM, Community Relations Commission nominee (current term: 1.7.2010 – 30.6.2012) [6]

**Professor Anthony Andrew Eyers,** MBBS (Sydney), FRACS, FRCS, Master of Bioethics (Monash), Royal Australasian College of Surgeons nominee (current term: 1.7.2010 – 30.6.2012) [6]

**Dr Susan Ieraci,** MBBS (Sydney), FACEM, Ministerial nominee (current term: 1.7.2010 – 30.6.2012) [5]

**Ms Rosemary Eva Kusuma,** BSW (Sydney), Ministerial nominee (current term: 1.7.2010 – 30.6.2012) [5]

**Associate Professor Rodney James McMahon,** MBBS (Sydney), Flt Lt (ret), DRCOG, DRANZCOG, IDD (Hons) MMED FAIM, FRACGP, Royal Australian College of General Practitioners nominee (current term: 1.7.2010 – 30.6.2012) [4]

**Dr Robyn Stretton Napier,** MBBS (Sydney), Australian Medical Association nominee (current term: 1.7.2010 – 30.6.2012) [5]

**Clinical Associate Professor Frederick John Palmer,** M.Litt (New England), MB ChB (Sheffield) MD (Sheffield), BA (New England), MRCP (London), DMRD (London), FRANZCR, FRCR (London), Royal Australian and New Zealand College of Radiologists nominee (current term: 1.7.2010 – 30.6.2012) [5]

**Ms Lorraine Poulos,** RN (SVH), Grad Cert HSM (ECU), Ministerial nominee (current term: 1.7.2010 - 30.6.2012) [5]

**Dr Denis Andrew Smith,** MBBS (Sydney), MHP, FRACMA, Royal Australasian College of Medical Administrators nominee (current term: 1.7.2010 – 30.6.2012) [5]

**Professor Allan David Spigelman,** MBBS (Sydney), FRACS, FRCS, MD, Universities nominee (current term: 1.7.2010 – 30.6.2012) [5]

**Dr Gregory Joseph Stewart,** MBBS, MPH (Sydney), FRACMA, FAFPHM, Ministerial nominee (current term: 1.7.2010 – 30.6.2012) [3]

**Dr Kendra Sundquist,** Ed.D (UTS), MHlth.Sc.(Ed) (Sydney), RN, MCNA, Ministerial nominee (current term: 1.7.2010 – 30.6.2012) [6]

**Professor Kathleen Anne Wilhelm** AM, MBBS (UNSW), MD, FRANZCP, Royal Australian & New Zealand College of Psychiatrists nominee (current term: 1.7.2010 – 30.6.2012) [5]

**Dr Choong-Siew Yong,** MBBS (Sydney), FRANZCP, Australian Medical Association nominee (current term: 1.7.2010 – 30.6.2012) [6]

Council members generally serve on one or more of the Council's Committees, including the Conduct Committee, Health Committee, Performance Committee, Executive Committee and Corporate Governance and Audit Committee (see table next page).

The Council acknowledges the invaluable contribution of the following members of the profession and the public who serve as members of Medical Tribunals, Professional Standards Committees, Impaired Registrants Panels, Performance Review Panels, urgent Inquiries, interview panels, Committees, and in a variety of other capacities, including as performance assessors:

Dr G Abouyanni, Dr K Arnold, Dr K Atkinson, Dr A Bean, Dr M Bennett, Dr R Benson, Dr C Berglund, Dr F Black, Dr P Bland, Dr L Boshell, Dr J Branch, Dr D L Brash, Dr J Brown, Dr P J Burn, Dr G Burton, Dr R Chapman-Konarska, Dr D Child, Dr A Christie, Dr C Clarke, Ms A Collier, Dr J Curotta, Dr G P Curtin, Dr R Davies, Dr V De Carvalho, Ms A Deveson, Dr M Diamond, Dr G Dore, Dr K Edwards, Dr S Ehsman, Ms G Ettinger, Dr R Fisher, Dr R Ford, Dr M Friend, Dr M Giuffrida, Dr A Glass, Dr M Gleeson, Em Prof W Glover, Dr P R Gordon, Dr A Gould, Ms A Gray, Dr R Halliwell, Dr N Harris, Dr J Hawkins, Dr J Hely, Dr M Higgins, Ms J Houen, Dr S Howle, Dr D Hunt, Dr K Hutt, Dr K Ilbery, Mr D Jackett, Dr W Jammal, Dr M Jarrett,

Dr W A C Johnston, Dr G Kaye, Ms M Kelly, Mr R Kelly, Dr J Kendrick, Dr E Kertesz, Ms H Kiel, Dr J King, Dr L King, Dr R King, Prof P Klineberg, Dr E Kok, Dr B Kotze, Dr P Langeluddecke, Prof H Lapsley, Dr V Lele, Dr K Lovric, Dr J Mair, Dr S Mares, Dr M McGlynn, Dr P McInerney, Dr A Meares, Dr S Messner, Dr P Morse, Dr M Mulligan, Dr J Ng, Dr N O'Connor, Dr B Parsonage, Dr H Pedersen, Dr C Peisah, Dr A Pethebridge, Dr J Phillips, Dr T Poon, A/Prof R Rae, Dr S Renwick, Dr J Riley, Ms D Robinson, Dr J Rodney, Dr I Rotenko, Dr J Sammut, Dr A Samuels, Dr P Schofield, Dr D Semmonds, Mr R Smith, Dr R Spark, Dr G Steele, Dr G Stewart, Dr I Stewart, Dr D Storey, Dr E Summers, Dr V Sutton, Dr I Symington, Dr G Tang, Dr S-H Toh, Dr E Tompsett, Dr V Tran, Dr P Truskett, Dr P Tucker, Dr F Varghese, Dr J Vaughan, Dr A Virgona, Ms A Walker, Dr M Walker, A/Prof R Walsh, Dr J Warden, Dr B Westmore, Dr P C Wijeratne, Dr J M Wright, Dr M Wroth, Dr G Yeo.

**Health Professional Councils Authority - Senior Officers**

**Jeanette Evans**
Director, Health Professional Councils Authority

**Ameer Tadros** BA/LLB (ANU) MALP (Sydney)
Assistant Director, Medical, Health Professional Councils Authority, Executive Officer, Medical Council of NSW

**David Rhodes** B Soc Stud, Grad Cert in Health Management
Assistant Director, Allied Health, Nursing and Midwifery, Health Professional Councils Authority

**Tim Burke** BBus FCA, FCPA, FCISA
Assistant Director, Finance and Shared Services, Health Professional Councils Authority

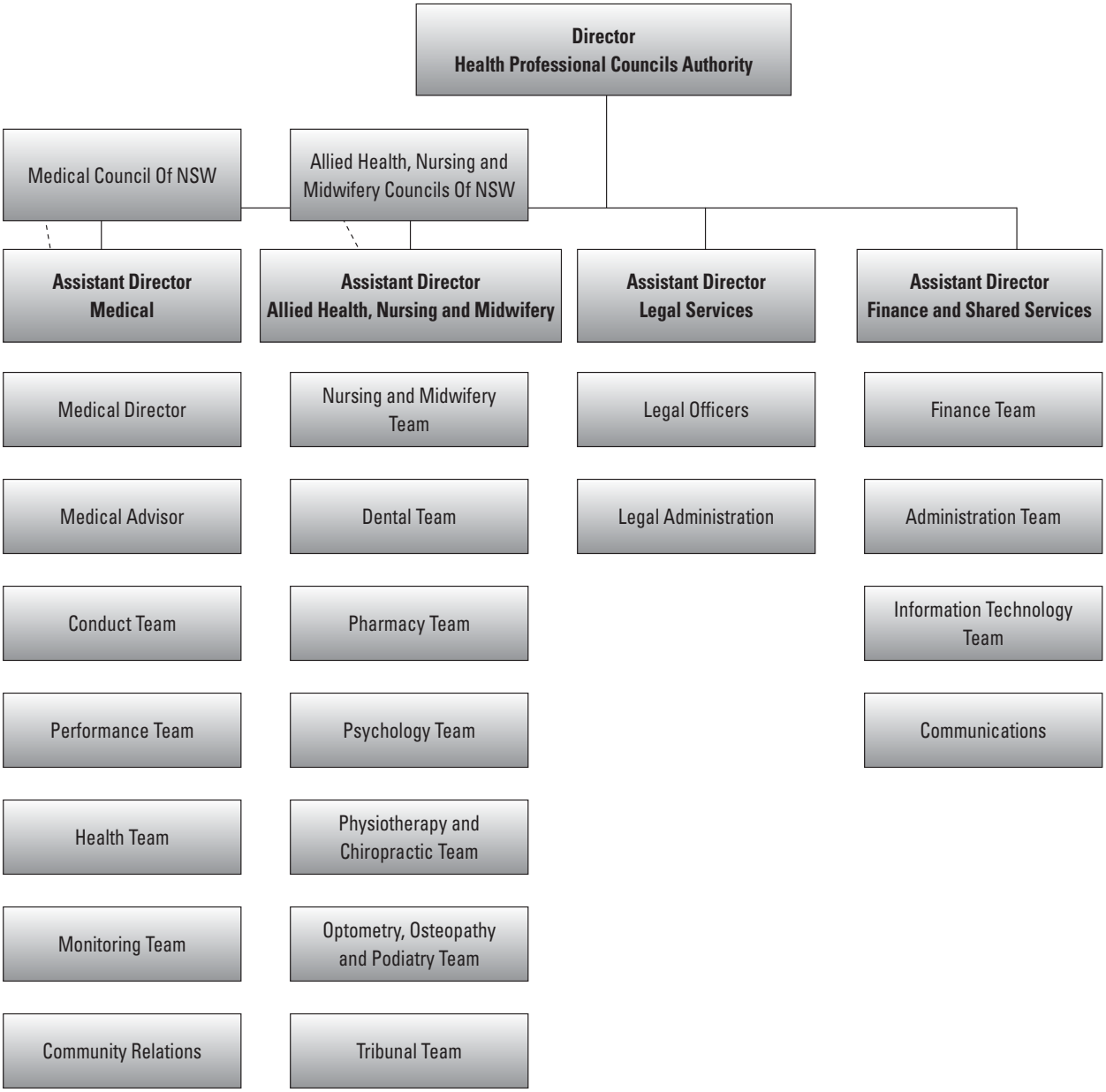
**Dr Alison Reid** B Med Sc, MBBS (Tas.), MHA, FAFPHM
Medical Director, Health Professional Councils Authority (to 17.12.2010)

**Miranda St Hill** BA LLB (Monash)
Legal Director, Health Professional Councils Authority

## Medical Council of NSW Committees 2010 - 2011

| CONDUCT | HEALTH | PERFORMANCE | EXECUTIVE | CORPORATE GOVERNANCE & AUDIT |
|---|---|---|---|---|
| **Chair** | **Chair** | **Chair** | **Chair** | **Chair** |
| **G Kesby** | **K Wilhelm** | **G Stewart** | **P Procopis** | **B Bennett** |
| B Bennett | S Adelstein | B Bennett | B Bennett | R Kusuma |
| A Carpentieri | M Christodoulou | A Carpentieri | G Kesby | P Procopis |
| A Eyers | S Ieraci | A Eyers | D Smith | C-S Yong |
| R McMahon | R Kusuma | G Kesby | G Stewart | |
| R Napier | L Poulos | R McMahon | K Wilhelm | |
| P Procopis | P Procopis | F J Palmer | | |
| D Smith | A Spigelman | P Procopis | | |
| K Sundquist | C-S Yong | K Sundquist | | |
| | | C-S Yong | | |
| R Walsh | | F Black | | |
| | | J Hely | | |
| | | E Tompsett | | |
| | | R Walsh | | |

## Health Professional Councils Authority Organisation Chart as at June 2011



## Management and administration

Shared services of the Health Professional Councils Authority (HPCA) is an administrative unit of the Health Administration Corporation (HAC). It was established on 1 July 2010 to provide secretariat and corporate services to the NSW Health Professional Councils to support their regulatory responsibilities.

The HPCA currently supports 10 Councils:

- Chiropractic Council of New South Wales
- Dental Council of New South Wales
- Medical Council of New South Wales
- Nursing and Midwifery Council of New South Wales
- Optometry Council of New South Wales
- Osteopathy Council of New South Wales
- Pharmacy Council of New South Wales
- Physiotherapy Council of New South Wales
- Podiatry Council of New South Wales
- Psychology Council of New South Wales

Each Council's Executive Officer and support staff provide secretariat services to enable it to fulfil its statutory role in regulating NSW health practitioners. In addition, the HPCA coordinates shared administrative, financial, legal and policy services across all of the Councils to assist them to meet their legislative and policy requirements as statutory bodies (see organisational chart previous page).

On behalf of the Councils, the HPCA liaises with the Australian Health Practitioner Regulation Agency regarding financial, registration and reporting matters; with the Health Care Complaints Commission on complaints management issues; and with the Department of Health on human resources and providing advice and responses to the Minister for Health and the Director-General on regulatory matters and appointments.

This coordinated approach provides efficiencies through shared services that would be costly for small bodies, like the Councils, to implement on their own. It also allows Councils to direct their attention to protection of the public by concentrating on their core regulatory functions.

# > management & **activities**

- **National Registration**
- **Professional Conduct**
- **Health**
- **Performance**
- **Monitoring**

# > national registration

This is the first Annual Report of the Medical Council of New South Wales (the Council) which came into existence on 1 July 2010. On 30 June 2010, the NSW Medical Board ceased to exist and responsibility for the registration of medical practitioners passed to the Medical Board of Australia.

The Medical Board of Australia and the nine other National Boards are responsible for registering health practitioners and for deciding the requirements for registration. The National Boards also develop and approve standards, codes and guidelines for their respective health profession and approve accredited programs of study which provide the necessary qualifications for registration in a health profession.

Further information about the operations of the Medical Board of Australia can be obtained at the Australian Health Practitioner Regulation Agency (AHPRA) website: www.ahpra.gov.au

The AHPRA was established by virtue of the *Health Practitioner Regulation National Law (NSW)* in NSW. The AHPRA's functions include providing administrative assistance and support to the National Boards, and their Committees, in exercising their functions. In consultation with the National Boards, the AHPRA also develops and administers procedures for the purpose of ensuring the efficient and effective operation of the National Boards.

At 30 June 2011, there were 27,686 registered medical practitioners (excluding students) whose principal place of practice was in NSW. This represents 32% of the total number of medical practitioners registered under the National Registration and Accreditation Scheme across Australia. Data for the current reporting year is supplied by the AHPRA.

# > professional **conduct**

## 2010-2011 **in summary**

- → 1424* complaints were received by the Medical Council of New South Wales (the Council) and the Health Care Complaints Commission (HCCC) in 2010/11.
- → Of the 1407 complaints assessed, 930 (67%) were declined, 90 (6%) were referred for investigation by the HCCC, and 227 (16%) were referred to the Council.
- → More than half (62%) of investigated complaints (55 matters) were then referred to the Director of Proceedings (DP) to determine whether a complaint should be prosecuted before a disciplinary body.
- → During the year, the Medical Tribunal made determinations on complaint matters against 18 practitioners which resulted in four practitioners being de-registered (or an order made that they not be re-registered). Two practitioners were suspended (the first practitioner for one year with additional conditions imposed and the second practitioner for six months who was additionally reprimanded and had conditions imposed). Eight practitioners were reprimanded and had conditions imposed on their registration, two practitioners had conditions imposed only and two practitioners received a reprimand only.
- → 14 Professional Standards Committee (PSC) hearings were finalised during the period, resulting in 11 practitioners having unsatisfactory professional conduct findings made against them. Of these, nine were reprimanded, two were cautioned and one practitioner had conditions imposed without reprimand or caution. In total, 10 practitioners had conditions imposed, two were reprimanded only and in two matters, the Committee found that the conduct did not amount to unsatisfactory professional conduct and no action was taken.
- → 55 urgent Council proceedings to take action to protect the public were held this year, as well as five proceedings to review orders imposed under these provisions. As a result of the urgent proceedings, 15 practitioners were suspended, 28 had conditions imposed on their registration and two practitioners removed their name from the Register or requested to be moved to the non-practising category of registration prior to proceedings being held. Eight matters resulted in no further action being taken. The proceedings to review orders resulted in the conditions being lifted in one matter, one practitioner having registration conditions altered and three practitioners having suspensions affirmed.

## Overview

Regulatory proceedings and processes have been conducted this year in accordance with both the *Medical Practice Act* and the *Health Practitioner Regulation National Law (NSW)*. Although the *Medical Practice Act* was repealed from 30 June 2010, there was a tail of matters caught by the transition provisions that were dealt with under the *Medical Practice Act* during the reporting year. The provisions of the *Health Practitioner Regulation National Law (NSW)* that relate to the regulation of medical practitioners are strongly modelled on the *Medical Practice Act* and this has resulted in little change to the way proceedings have been conducted in this reporting year. The biggest change has been the impact for the Council in having to interface with the Australian Health Practitioner Regulation Agency (AHPRA) to ensure the results of proceedings are accurately reflected on the online public Register.

There was a rise in the number of complaints received in 2010/11 (1424) compared to the previous reporting year (1249).

Forty-seven notifications (compared to 13** in 2009/10 and eight in 2008/09) were expressed to have been made in accordance with the mandatory reporting provisions of the *Health Practitioner Regulation National Law (NSW)*, which require any registered health practitioner, employer or education provider to report a colleague, employee or student who appears to have committed reportable misconduct. The *Health Practitioner Regulation National Law (NSW)* requires mandatory notifications to be made to the AHPRA, and, in NSW, the AHPRA forwards these to the Council and the HCCC for appropriate action. No complaint has yet been made that a practitioner who was under an obligation to make such a notification has not done so.

During the year there was an increase in the proportion of matters declined (56% to 67%). Referrals to the Council dropped slightly (17% to 16%), and the proportion of matters referred to the HCCC for investigation also dropped (9% to 6%).

Of the 90 matters investigated (compared with 120 last year), the proportion which resulted in referral to the Director of Proceedings (DP), for her to assess whether disciplinary proceedings were warranted, remained at the same level as recent years (62% in 2009/10 and in 2010/11). Last year, 18 of the investigated matters related to one practitioner.

Of the 90 matters investigated by the HCCC, the proportion referred back to the Council for action, such as disciplinary counselling or consideration in a Health or Performance pathway, rose from 17% last year to 22% this year.

* The Australian Health Practitioner Regulation Agency and National Boards' Annual Report 2010/11 reports the total complaints/notifications received for medical practitioners in NSW as 1455. This has been incorrectly reported and the figure is 1495 (being 1424 complaints and 71 health notifications received in 2010/11).

** Incorrectly reported as 10 in the NSW Medical Board Annual Report 2010

There was a decrease in the number of matters dealt with by the Medical Tribunal. Thirty-two practitioners were the subject of matters referred to the Medical Tribunal (down from 42 in 2009/10), 22 of which were complaints prosecuted by the HCCC. The remainder consisted of appeals and review applications. One of the appeals (subsequently withdrawn) was an appeal against a Medical Board of Australia decision to refuse to register a medical practitioner.

The number of matters where urgent interim suspension or imposition of conditions by the Council was considered to be appropriate under section 150 of the *Health Practitioner Regulation National Law (NSW)* (or section 66 of the *Medical Practice Act*) continued to rise (from 26 in 2007/08, to 40 in 2008/09, 47 in 2009/10 and to 52 this year). The number of urgent interim proceedings held during the year is dependent on the nature and type of matter which comes to the Council's attention from various sources. The number of practitioners suspended this year as a result of these hearings was 15 (19 practitioners were suspended last year). Two practitioners elected to surrender their registration in lieu of attending such proceedings. An additional eight proceedings resulted in no urgent interim action being taken by the Council. Although no urgent interim action was taken, two practitioners were referred to the Performance Program and two continued to be monitored as they were already subject to urgent interim conditions operating from previous proceedings.

The increase in the number of proceedings has had a significant impact on the workload of the Council's Legal, Monitoring and Conduct teams.

In line with legislative requirements, decisions of the Medical Tribunal and PSCs are published in full on the Council's website. The Council also makes available relevant decisions from other courts and tribunals.

A list of de-registered and suspended practitioners was maintained on the former NSW Medical Board's website up until 30 June 2010. From 1 July 2010, a search can be made on the AHPRA website for health practitioners whose registration has been cancelled by an adjudication body under the *Health Practitioner Regulation National Law (NSW)*.

## The complaints handling process

See Appendix 18 of this Annual Report for a summary of complaints bodies and processes.

### Assessment of complaints

During 2010/11, the Council and the HCCC received 1424 complaints (including notifications from the AHPRA that were deemed to be complaints) about medical practitioners. The Council and the HCCC completed an assessment of 1407 complaints (up from 1279 in the previous year). The most common outcome of assessment was to decline to deal with the complaint (67%), followed by referral to the Medical Council (16%). Six percent were referred to the HCCC for investigation (down from 9% in the previous year).

Both the Council and the HCCC can accept complaints from any source about medical practitioners. Legislation requires the Council and the HCCC to consult on the assessment of each complaint. This consultation occurs weekly. In most cases, prior to the assessment of a complaint, the HCCC prepares an assessment brief, confirming with the complainant the issues to be considered and obtaining the practitioner's response to the complaint.

In general, the HCCC has 60 days from receipt of a complaint to complete the assessment. The HCCC is also required to notify the Council of a complaint as soon as practicable. This allows the Council to review each complaint received and ensure that complaints which appear to warrant urgent interim action to protect the public can be dealt with by the Council under section 150 of the *Health Practitioner Regulation National Law (NSW)*.

At assessment, a complaint may be declined if it falls outside the Council's or HCCC's jurisdiction, does not relate to health care, or does not raise clinical issues of sufficient seriousness. In some instances, a complaint is declined at assessment as the parties have subsequently resolved the matter. This occurred in 3% of complaints declined in the period, down from 8% in the previous year.

The Council considers that a complaint should be referred to the HCCC for disciplinary investigation when there is evidence of unethical, reckless, wilful or criminal behaviour in either clinical or non-clinical domains. In all other circumstances, public protection can be achieved through the application of non-disciplinary and educative responses such as referring complaints to the Council for consideration through the Performance or Health Programs, or through conciliation or assisted resolution with a complaints resolution officer at the HCCC.

The following table illustrates the trends in complaints assessment for the past three years.

**Outcome of complaint assessments (%)**

| | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|
| | n = 1268 | n = 1279 | n = 1407 |
| Investigation | 10 | 9 | 6 |
| Refer to the Medical Council | 19 | 17 | 16 |
| Refer to another person or body | 1 | 1 | 1 |
| Conciliation | 5 | 4 | 10 |
| Direct resolution | 12 | 13 | n/a |
| Decline to deal with | 53 | 56 | 67 |

The following table shows the types of complaints lodged over the past three years. During this reporting period, complaints concerning clinical competence continued to dominate as the main area of complaint. This category includes allegations about incorrect or inadequate treatment or clinical advice, misdiagnosis and complications following treatment.

**Type of complaint (%)**

| | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|
| | n = 1268 | n = 1279 | n = 1407 |
| Clinical competence | 54 | 57 | 55 |
| Communication | 18 | 15 | 15 |
| Conduct | 24 | 23 | 23 |
| Practice administration | 4 | 5 | 7 |

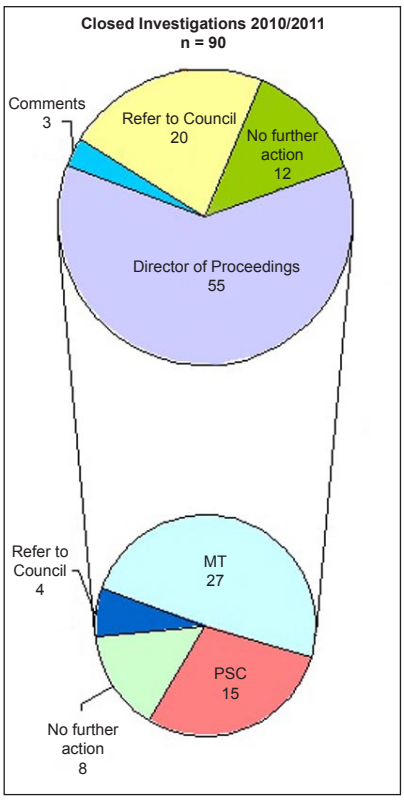
## Complaints investigated by the Health Care Complaints Commission (HCCC)

During the year, 90 complaints were referred to the HCCC for investigation, compared to 120 in the previous year. These complaints were referred on the basis that they appeared to the Council or the HCCC, at the time of assessment, to raise a significant issue of public health or safety or provide grounds for disciplinary action against a practitioner. In this period, 90 investigations were finalised, compared to 143 in the previous reporting year. Outcomes of the investigations during the year included:

- 12 cases (13%) were terminated and no further action was taken against the practitioner (down slightly from 14% last year);
- 3 cases (3%) required comments to be made in the form of a letter from the HCCC to the practitioner (down from 7% last year);
- 20 cases (22%) referred the practitioner to the Council for it to take appropriate action, up from 17% last year. Such action may include disciplinary counselling in the form of a letter or interview or referral of the matter for consideration of a Health or Performance pathway;
- 55 cases (62%) were referred to the DP to determine whether a complaint ought to be prosecuted before a disciplinary body, either a PSC or the Medical Tribunal (the same proportion as last year).

The HCCC is required to consult with the Council before deciding what action to take following the completion of an investigation, although the final decision on the outcome rests with the HCCC.

The following chart illustrates investigation outcomes for the reporting period and the outcome of matters referred to the DP.




### Complaints referred to the DP

During the reporting year, 55 finalised investigations (62%) led to a referral to the DP. Upon referral of a matter, the DP is required to determine whether a matter should be prosecuted before a disciplinary body. The DP is required to consult with the Council, but the final determination rests with the DP.

In 2010/11, the DP referred 27 cases concerning 22 practitioners to the Medical Tribunal (down from 28 practitioners last year) and 16 cases concerning 15 practitioners to a PSC (down from 19 last year).

Of the matters the DP determined not to prosecute, no further action was taken in relation to eight practitioners (as the practitioners were no longer registered or de-registered by the Medical Tribunal) and four practitioners were referred back to the Council. The Council directed three of these practitioners to attend counselling and one practitioner was referred to the Health Program.

### Complaints remaining under investigation

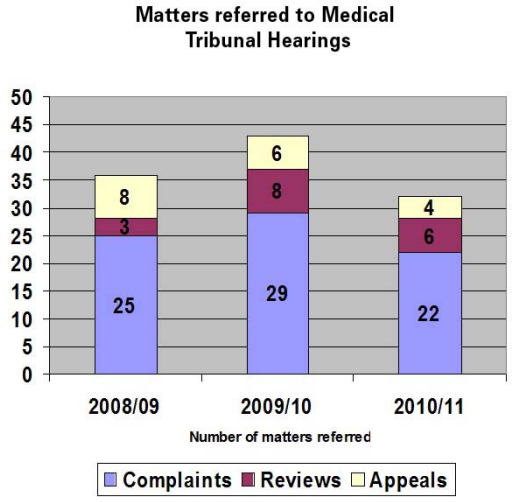
At 30 June 2011, the HCCC reported that 92 practitioners were currently under investigation (down from 112 in the previous year) and 52 matters were with the DP for consideration of possible disciplinary action (up from 38).

# Disciplinary hearings

## Referral to the Medical Tribunal

In addition to the complaint matters against 22 practitioners referred by the DP, four appeals and six review applications were also referred to the Medical Tribunal. Two of the appeals and two of the review applications were later withdrawn by the appellant/applicant prior to the hearing. The Council made no direct referrals pursuant to section 150(3)(b) of the *Health Practitioner Regulation National Law (NSW)* (which requires the Council to refer any contravention of critical compliance orders on a doctor's registration) this reporting year.

One of the appeals referred to the Medical Tribunal (and then withdrawn) was an appeal against a decision made by the Medical Board of Australia to refuse to register a medical practitioner. Such appeals replace those previously lodged against registration decisions made by the NSW Medical Board. Although the Medical Board of Australia will now be the respondent in registration appeals, the Council has a responsibility for referring these appeals and for appointing the Medical Tribunal hearing members.




## Matters commenced in the Medical Tribunal 2010/11

In the year under review, 21 matters (including complaints, appeals, restorations and review applications) were commenced in the Medical Tribunal. This compares with 42 in 2009/10, and 33 matters in 2008/09.

The following table profiles the types of matters commenced in the Tribunal in the last three years.

**Matters commenced in the Tribunal**

| | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|
| **Complaints** | | | |
| Boundary Crossing | 5 | 8 | 8 |
| Prescribing | 7 | 8 | 5 |
| Breach Conditions | 2 | 4 | 0 |
| Treatment | 1 | 3 | 3 |
| Competence/impairment | 0 | 0 | 0 |
| Fraud | 1 | 2 | 0 |
| Hygiene | 0 | 1 | 0 |
| Criminal matter | 3 | 0 | 0 |
| Section 65 referral (MPA) | 2 | 1 | 0 |
| Section 149D referral (HPRNL) | | | |
| Section 63 recommendation (MPA) | 1 | 0 | 0 |
| Section 146D recommendation (HPRNL) | | | |
| Section 66(2)(b) referrals (MPA) | 0 | 1 | 0 |
| Section 150(2)(b) referral (HPRNL) | | | |
| **Appeals** | | | |
| PSC | 1 | 1 | 0 |
| Registration | 4 | 4 | 1 |
| Conditions/suspension | 2 | 1 | 0 |
| PRP | 0 | 0 | 0 |
| Board/Council decision | 1 | 0 | 0 |
| **Restorations** | 3 | 3 | 2 |
| **Review of conditions** | 0 | 5 | 2 |
| **Total matters commenced in the Medical Tribunal** | **33** | **42** | **21** |

Note: MPA – *Medical Practice Act*
HPRNL – *Health Practitioner Regulation National Law (NSW)*

## Matters finalised in the Medical Tribunal

The Medical Tribunal determined matters in the following categories:

| | 2008/09 | 2009/10 |
|---|---|---|
| Complaints | 19 | 18 |
| Section 66(2)(b) referral / section 150(2)(b) | 1 | 0 |
| Appeals | 7 | 1 |
| Reviews | 4 | 5 |
| Total | 31 | 24* |

* An additional six matters were lodged with the Tribunal (four appeals and two reviews) however these were withdrawn and did not proceed.

## Medical Tribunal matters outstanding

As at 30 June 2011, 39 matters referred to, or lodged in, the Medical Tribunal in this or previous years await determination. This is the same number outstanding as last year, year ending 30 June 2010, while there were 31 outstanding matters in the year ended 30 June 2009.

**Complaints**

*Heard/part-heard*

As at 30 June 2011, two matters have been heard and are awaiting judgment.

*Listed for hearing and to be listed for hearing*

As at 30 June 2011, 10 matters have been listed for hearing and 23 are yet to be listed for hearing.

**Appeals**

As at 30 June 2011, there are three appeals outstanding in the Medical Tribunal. Of these, two are awaiting hearing dates and one appeal has been stood over generally.

**Reviews**

As at 30 June 2011, one application for review of a de-registration order or the imposition of conditions has been lodged in the Medical Tribunal and remains outstanding. It is yet to be listed for hearing.

The Medical Tribunal decisions listed in the following table are published in full on the Council's website (subject to any relevant non-publication directions or orders not to publish that are made by the Medical Tribunal) at www.mcnsw.org.au . A practitioner's current registration status is available by searching the on-line Public Register on the AHPRA's website at www.ahpra.gov.au . A search of the AHPRA website can also be made for the details of cancelled health practitioners, that is practitioners whose registration has been cancelled by order of an adjudication body under the *Health Practitioner Regulation National Law (NSW)*.

## Medical Tribunal decisions 2010/11

| Judgment date | Practitioner | Tribunal Outcome |
|---|---|---|
| **COMPLAINTS PROSECUTED BY THE HEALTH CARE COMPLAINTS COMMISSION** | | |
| 02/07/2010 | Richard Arthur Allen | Reprimanded |
| 27/08/2010 | Yolande Lucire | Conditions imposed |
| 30/09/2010 | Gordon Christopher Howe | Conditions imposed |
| 07/10/2010 | Gopal Chandra Mukherjee | Not to be re-registered for two years |
| 15/10/2010 | Ray Woods | Reprimanded and conditions imposed |
| 20/10/2010 | Swapan Chowdhury | Reprimanded and conditions imposed |
| 02/11/2010 | Satya Pal Bhatia | Reprimanded. Now non-practising |
| 30/11/2010 | Robert Leslie Sims | Not to be re-registered for one year |
| 07/12/2010 | Bao-Quy Nguyen-Phuoc | Reprimanded and conditions imposed |
| 14/12/2010 | John Gerard Holmes | Suspended for one year and conditions imposed |
| 15/12/2010 | Chi-Quan Benjamin Ly | Reprimanded and conditions imposed |
| 17/12/2010 | Timothy Tristan Tang-Tat Wong | Not to be re-registered for two years |
| 15/02/2011 | Basavaraj Vastrad | Reprimanded and orders |
| 24/02/2011 | Elizabeth Mary Millard | Suspended for six months, reprimanded and conditions imposed |
| 30/03/2011 | Joseph Patrick Nicholas | Reprimanded and conditions imposed |
| 15/04/2011 | Kinga Maria Gorondy-Novak | Reprimanded and conditions imposed |
| 21/04/2011 | Stamatios Ktenas | Reprimanded and conditions imposed |
| 05/05/2011 | Victor King | De-registered. Not to apply for review for 18 months (Decision under appeal) |
| **APPEALS*** | | |
| 19/10/2010 | A Practitioner (name suppressed) | Appeal partially successful. Conditions altered. |

* Three further appeals, two lodged prior to 1 July 2010 and one in this period, were withdrawn during the period and did not proceed.
An additional appeal was lodged concerning a decision by the Medical Board of Australia, but this appeal was also withdrawn and did not proceed.

| | | |
|---|---|---|
| **REVIEW APPLICATIONS FOR RESTORATION TO THE REGISTER*** | | |
| 15/10/2010 | Jason Jefferson Martin | Restored with conditions |
| 25/03/2011 | Enn Vilo | Application dismissed |
| 16/05/2011 | Naresh Parajuli | Restored with conditions |

* Two further Review applications for Restoration to the Register were lodged, but withdrawn and did not proceed.

| | | |
|---|---|---|
| **APPLICATIONS FOR REVIEW OF CONDITIONS** | | |
| 28/02/2011 | Ghee Hong Michael Tan | Application successful. Conditions lifted |
| 14/03/2011 | Vipal Kumar Mehta | Application successful. Conditions lifted |

## Sample Medical Tribunal decisions

Readers can use the web links provided to read the full Medical Tribunal decisions related to these case summaries.

**Relationship with patient**

Patient A consulted the general practitioner from mid 1991 until late 2006 and then on four occasions in late 2008 and early 2009. In late 1998, after undertaking a pap smear in his rooms, the practitioner had sexual intercourse with Patient A. From late 1998 until early 2008, the practitioner engaged in an inappropriate personal and sexual relationship with Patient A when a regular and continuous therapeutic relationship existed for most of that period.

The practitioner admitted the particulars of the complaint and that he had engaged in unsatisfactory professional conduct which amounted to professional misconduct. The Medical Tribunal found the practitioner's conduct constituted professional misconduct within the meaning of section 37 of the *Medical Practice Act*. He was suspended for 12 months and had Practice and Health Conditions imposed on his registration.
Read more.

**Inappropriate prescribing and record keeping plus breach of registration conditions**

In 2006, the practitioner admitted to prescribing Schedule 8 and Schedule 4D medications in large quantities on demand, including to patients who were on the methadone program. The Council imposed urgent interim conditions on his registration to protect the public. These prohibited him from possessing, supplying, administering or prescribing Schedule 8 and Schedule 4D medications. When the practitioner subsequently breached these conditions, the Council suspended his registration, again as an urgent interim measure.

In 2010, the HCCC prosecuted a complaint in the Medical Tribunal in relation to the practitioner's:

- → Conviction in 2007 for 63 counts of making false or misleading statements in court proceedings in relation to fraudulent claims against Medicare Australia for services he had not provided;
- → Prescribing which demonstrated that his practice of medicine was significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience, and was improper or unethical;
- → Inadequate record keeping in contravention of both the Medical Practice Regulation and the Poisons and Therapeutic Goods Regulation;
- → Breach of conditions.

The practitioner admitted all the particulars of the complaints and that his conduct amounted to professional misconduct. The Medical Tribunal noted that the practitioner's conduct included multiple breaches of his conditions, despite the intervention from the NSW Medical Board on a number of occasions and his entry into the Impaired Registrants Program in 2008. The Medical Tribunal found that the practitioner either could not or would not comply with his conditions over an extended period of time. The practitioner was deregistered and ordered not to apply for re-registration for two years from October 2010.
Read more.

## Referral to a Professional Standards Committee (PSC)

In total, the DP referred 16 matters to a PSC and 14 PSC Inquiries were held in relation to matters referred in this or the preceding year. PSC Inquiries are open to the public at the premises of the Institute of Arbitrators & Mediators Australia at Level 9, 52 Phillip Street, Sydney. Details of impending public Inquiries are published on the Council's website.

Due to the legislative change in November 2009, which entitled the parties to a PSC Inquiry to be legally represented (previously parties were entitled to be assisted but not represented), legal representation has now become the norm.

Fourteen PSC Inquiries were finalised during the reporting year, resulting in 11 practitioners having unsatisfactory professional conduct findings made against them. One matter was withdrawn and in two matters, no orders were made because it was found that the complaint did not amount to unsatisfactory professional conduct.

The PSC decisions listed in the table on the following page are published in full on the Council's website (subject to any relevant non-publication directions or orders not to publish made by the PSC) at www.mcnsw.org.au.
Prior to changes in the legislation in 2008 which resulted in public PSC hearings and publication of PSC decisions, such decisions were confidential.

## PSC decisions 2010/11

| Decision date | Practitioner | Outcome |
|---|---|---|
| 01/07/2010 | Dr D | No further action |
| 13/07/2010 | Dr Geoffrey Laurence Brooke-Cowden | No further action |
| 21/09/2010 | Dr Paramalingam Lingathas | Reprimanded. Conditions imposed |
| 18/10/2010 | Dr Kurt Kaiser | Reprimanded. Conditions imposed |
| 21/10/2010 | Dr Sergio Staraj | Reprimanded |
| 28/10/2010 | Dr Michael Gerd Hugo Wiegand | Reprimanded. Conditions imposed |
| 23/11/2010 | Dr Dror Schmuelly | Cautioned. Conditions imposed |
| 29/11/2010 | Dr Ricardo Al Khouri | Cautioned. Conditions imposed |
| 24/12/2010 | Dr Surendranath Vithalrao Rananavare | Reprimanded. Conditions imposed |
| 25/01/2011 | Dr Satya Dev Atreya | Reprimanded. Conditions imposed |
| 04/04/2011 | Dr Biing-Lin Yin | Reprimanded |
| 28/04/2011 | Dr Michael John Forster Hunter | Reprimanded. Conditions imposed |
| 13/05/2011 | Dr Glenn Allan Taylor | Reprimanded. Conditions imposed |
| 25/05/2011 | Dr Geoffrey Robert Tyler | Conditions imposed |

### Referral to a counselling interview

During the year, 26 practitioners were referred to the Council for counselling (24 in 2009/10) and 30 practitioners, whose matters were referred to the Council in either this or the previous period, were counselled. A referral to counselling occurs on the basis that a practitioner's apparent departure from acceptable standards is not considered so significant as to warrant referral to the DP, but it still raises concerns that need to be addressed. Counselling provides an opportunity for a practitioner to reflect upon the issues raised within the context of their practice and to critically examine suggestions for improvements to their practice. The Council also invited three practitioners to attend the Council for an interview to discuss concerns that had come to the Council's attention.

### Section 150 proceedings – Urgent action to protect the public

The Council must exercise its powers to either suspend a practitioner's registration or to impose conditions upon the practitioner's registration where it is satisfied that such action is appropriate for the protection of the public's health or safety or is otherwise in the public interest. Such action is an interim measure only. Where the Council takes action under section 150 of the *Health Practitioner Regulation National Law (NSW)*, the matter must be referred to the HCCC for investigation (except in cases of impairment). The HCCC is to investigate the matter and, if it is appropriate to do so, refer a complaint to a Professional Standards Committee, Medical Tribunal or consult with the Council to refer the practitioner to an Impaired Registrants Panel. Section 150 proceedings are the equivalent of section 66 proceedings under the repealed *Medical Practice Act*.

There were 55 practitioners referred to section 150 proceedings during the reporting period and two of these practitioners were referred to two separate section 150 proceedings in that time. The Council conducted eight section 66 proceedings (in addition to three review of orders proceedings) during the year under the *Medical Practice Act*. The Council also conducted 47 section 150 proceedings and two reviews of orders proceedings, under the *Health Practitioner Regulation National Law (NSW)*. This compared with 47 proceedings (and seven reviews) during the previous reporting year. Fifteen practitioners were suspended during this reporting period as a result of the Council exercising its powers under section 150. Twenty-eight medical practitioners had conditions imposed on their registration. Two practitioners voluntarily requested to be moved to the non-practising category. Eight matters did not require urgent interim action.

Of these eight, three continued with conditions that were already operating and two were referred to the Performance Committee. During this reporting period, three practitioners requested a review of an order made under section 66 and two under section 150. Of these, three practitioners had their application dismissed and suspensions affirmed, one had conditions removed and one practitioner's conditions were altered.

The Council exercises the section 150 power under the *Health Practitioner Regulation National Law (NSW)* in a variety of circumstances, including where a practitioner:

- has been charged with serious criminal matters (particularly if arising within the practice of medicine);
- suffers from a serious impairment and demonstrates little or no insight into the extent of the problem and the risk posed to the public;
- has continued to recklessly prescribe drugs in a manner which is dangerous and is likely to cause harm, despite previous warnings or counselling;
- has breached conditions imposed on his/her registration.

## Disciplinary hearings snapshot

**Medical Tribunal matters and outcomes**

Eighteen complaints were determined by the Medical Tribunal in 2010/11 and related to issues of boundary crossing, prescribing, treatment, breach of conditions and fraud. These Medical Tribunals resulted in four practitioners being de-registered (or an order made that they not be re-registered). Two practitioners were suspended (the first for one year with additional conditions imposed and the second for six months who was additionally reprimanded and had conditions imposed). Eight practitioners were reprimanded and had conditions imposed on their registration, two practitioners had conditions imposed only and two practitioners received a reprimand only. Copies of the Medical Tribunal decisions are available on the Council's website www.mcnsw.org.au

**Professional Standards Committee matters and outcomes**

Fifteen practitioners were referred to a PSC during 2010/11 and 14 hearings were held (including those referred from the previous year). One matter was referred and subsequently withdrawn. The PSC Inquiries related to patient management, prescribing, diagnosis and treatment, clinical error, competence, record keeping, impairment and boundary crossing. Twelve practitioners had unsatisfactory professional conduct findings made against them, of whom seven were also reprimanded and had registration conditions imposed. One practitioner who had a finding of unsatisfactory professional conduct was cautioned. In two matters the complaint was dismissed or no orders were made. Copies of the PSC decisions are available on the Council's website www.mcnsw.org.au

**Section 150 proceedings and outcomes**

Fifty-five practitioners were referred to section 150 proceedings under the *Health Practitioner Regulation National Law (NSW)*. The Council conducted 60 urgent interim proceedings in total: eight section 66 proceedings and three reviews of orders imposed under section 66 (of the *Medical Practice Act*); and 47 section 150 proceedings as well as two reviews of orders imposed under section 150 of the *Health Practitioner Regulation National Law (NSW)* during the year. Proceedings related to issues of prescribing, drug use, boundary crossing, criminal charges and convictions, impairment, capacity to practise, treatment, and breach of conditions. Fifteen practitioners were suspended, 28 had conditions imposed on their registration, one was referred for a performance assessment and eight matters resulted in no urgent action being taken. Three section 150 proceedings were not finalised during the reporting period. Two practitioners who would otherwise have been the subject of section 150 proceedings surrendered their registration or requested to be moved to the non-practising category of registration.

# > health

## 2010-2011 **in summary**

- → 71 notifications were made to the Health Program, compared with 57 and 79 notifications in the previous two reporting years.
- → 30% of notifications were made by colleagues, 23% were self-notified, and 28% were made by treating practitioners or as a result of a hospital admission. Nineteen per cent came from other sources.
- → 46 Impaired Registrants Panels were convened and related to psychiatric illness (67%), drug addiction (13%), alcohol addiction (17%) and cognitive problems (3%).
- → There were 111 participants in the Program and 16 practitioners exited the Program in the reporting year.
- → Ethyl Glucuronide (EtG) testing was introduced to monitor abstinence from alcohol.
- → The Health Program Handbook was significantly updated.

## Overview

The primary objective of the Health Program of the Medical Council of New South Wales (the Council) is to protect the public while maintaining impaired practitioners in practice, if it is safe to do so. A guiding principle under which the Health Program operates is that restrictions are to be placed on a medical practitioner's practice only if they are necessary to ensure that health services are provided safely and are of appropriate quality.

The Health Program had been operating under the provisions of the *Medical Practice Act* since 1992 and transferred to the *Health Practitioner Regulation National Law (NSW)* on 1 July 2010. It is the longest established health program in Australia. Since its inception, more than 235 practitioners have successfully exited the Program, having fulfilled the Council's monitoring requirements.

As confidence in the Health Program has grown over the years, so has the profession's willingness to come forward with information about impaired practitioners. The Council becomes aware of impaired practitioners through notifications and self-notifications as well as through its dealings with practitioners in its Performance and Conduct Sections.

The reporting year has seen an increase in the number of mandatory reports concerning impaired practitioners. Since 2008, NSW has been subject to a mandatory reporting requirement in relation to practitioners who are reasonably believed to have been practising while intoxicated through consumption of drugs or alcohol and this has been reinforced under the new *Health Practitioner Regulation National Law (NSW).* An additional requirement introduced under the *Health Practitioner Regulation National Law (NSW)* is to report a practitioner who places the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment. All medical practitioners should be aware of their statutory obligations in this regard. In all other circumstances, although there is no legal obligation for practitioners to notify the Council, there is a profound professional and ethical obligation to do so.

The average age of impaired practitioners at the time of notification to the Council is 42 years. Almost 90% of Health Program participants remain in practice and, if it is assumed that they continue to practise until they are 60 years old, program participants can be expected to contribute a total of more than 8000 working years to the medical workforce after the notification to the Council. In the absence of the Health Program, many of these working years would have been lost to the community.

An overview of the activities of the Health Committee is as follows:

| | | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|---|
| **Notifications to Health Program** | | 79 | 57 | 71 |
| **Impaired Registrants Panel reports endorsed:** | Psychiatric Illness | 37 | 33 | 31 |
| | Alcohol | 7 | 2 | 8 |
| | Drug | 15 | 8 | 6 |
| | Physical | 2 | 0 | 0 |
| | Cognitive | Not Reported | Not Reported | 1 |
| | **Total** | **61** | **43** | **46** |
| **Review Interviews held** | | 276 | 263 | 242 |
| **Exits from the Program** | | 17 | 17 | 16 |
| **Participants in Program as at 30 June** | | 146 | 122 | 111 |

## Notifications

| **Notifications by source** | **2008/09** | **2009/10** | **2010/11** |
|---|---|---|---|
| | n=79 | n=57 | n=71 |
| Colleagues (including employers) | 16 | 10 | 21 |
| Self-notifications | 30 | 25 | 16 |
| University | 2 | 1 | 4 |
| Council Committee | 2 | 1 | 4 |
| Treating practitioner/hospital admission | 13 | 15 | 20 |
| Other | 16 | 5 | 6 |
| **Total** | **79** | **57** | **71** |

While self-notifications have previously been the largest source of notifications to the Health Program, currently the largest source is colleagues, including employers. This may be a reflection of mandatory reporting requirements introduced in 2008.

Cross-referral from other Council Committees indicates an increasing awareness that underlying health problems may be manifested as unsatisfactory professional performance or unsatisfactory professional conduct.

## Health Program Process

When a notification indicates that a practitioner may be impaired, according to its statutory definition, the practitioner will be assessed by a Council appointed practitioner, often a psychiatrist, who will prepare a report for the Council. The Health Committee will then review this report and decide whether to convene an Impaired Registrants Panel (IRP).

In the Council's experience, most impaired practitioners can continue to practise, subject to appropriate limitations. As a consequence, the most common outcome of an IRP is that conditions are placed on the practitioner's registration. IRPs are non-disciplinary and are designed to encourage impaired practitioners to seek treatment for their impairment and remain in safe practice. This year, 29 practitioners entered the program with 63% of IRPs concluding with the practitioner agreeing to conditions being placed on his or her registration. Seven per cent of IRPs resulted in no further action being taken, 26% were adjourned, and in 4%, other action was taken. There are a range of reasons for an IRP being adjourned, including to seek further information or to allow the practitioner to seek further treatment or support, particularly if they are very unwell at the time of the initial IRP.

Under the provisions of the *Health Practitioner Regulation National Law (NSW)*, the AHPRA is required to notify the practitioner's employer of the conditions imposed on the practitioner's registration.

The conditions that are placed on a practitioner's registration are tailored to address the practitioner's particular circumstances and type of impairment. Practitioners with a drug addiction are generally required to attend an appropriate specialist (usually a psychiatrist) for treatment, undertake urine drug testing according to the Council's protocol, attend a Council appointed practitioner for monitoring, and surrender an authority to prescribe drugs of addiction. Practitioners who have abused alcohol will also need to attend for ongoing treatment and undertake regular blood or urine testing. Practitioners suffering from a psychiatric illness must attend a treating psychiatrist and comply with treatment.

Practitioners are monitored over an extended period of time. Practitioners whose impairment relates to drugs or alcohol can expect to be monitored by the Council for a minimum of three years. Practitioners with psychiatric illness may remain in the Health Program for an extended period, although the intensity of their monitoring is varied according to the stability of their illness.

The Health Committee requires Program participants to attend an exit interview prior to leaving the Program. The interview serves to focus attention on the practitioner's insight, learning and relapse prevention strategies. It also provides the Council with useful feedback about the administration of the Program.

In the year ending 30 June 2011, a total of 16 practitioners exited the Health Program. These practitioners all had their conditions lifted and returned to full registration. The Council was satisfied that these practitioners had actively sought to manage their impairment, were willing and able to take responsibility for their own health and were safe to practise unconditionally. In view of the rehabilitative focus of the Program, this is regarded as a positive and encouraging outcome. As in previous years, the relapse rate remained below 5%.

Chronic Relapsing Illness Authorisation

In the previous reporting year, the Health Committee introduced a process which enables it to exit practitioners with chronic relapsing illnesses, such as Bipolar Disorder and Eating Disorders, from the Health Program with confidence that the Council will be informed if the practitioner becomes unwell or is not compliant with treatment. Previously, stable practitioners were often maintained on the Program with conditional registration in case of a relapse of their illness. In the current reporting year, this process was extended to allow some practitioners to be subject to a Chronic Relapsing Illness Authorisation rather than enter the Health Program. In these cases, the practitioner would be assessed by a Council-appointed practitioner but not necessarily attend an IRP or enter the Health Program.

A practitioner is asked to complete an authority allowing treating practitioners to advise the Council if there is any concern about the practitioner's health or if the practitioner:

- → is non-compliant with treatment; or
- → terminates treatment against advice.

The practitioner also undertakes to notify the Council of any change in treating practitioners.

There are currently over 50 practitioners subject to a Chronic Relapsing Illness Authorisation.

The Health Committee has found this to be an extremely valuable tool, and participants welcome the opportunity to return to unconditional registration, or to enter the Health Program. In the reporting year, one practitioner has returned to the Health Program as a direct result of authorising his treating practitioner to contact the Council.

Health Program Handbook

During the reporting year, the Health Program Handbook was substantially revised and updated to reflect changes to the legislation and the Program. The Handbook provides information about the Program and is designed to assist participants during their involvement with the Council. A new section has been included which provides a range of resources and reading material on mental health and other health and career-related references.

Ethyl Glucuronide (EtG) testing

During the reporting year, the Health Committee introduced Ethyl Glucuronide (EtG) testing to monitor abstinence from alcohol. EtG is a biomarker test that detects the presence of ethyl glucuronide in urine samples and is used to monitor alcohol consumption in practitioners who are prohibited from drinking alcohol by way of a condition on their registration.

## Medical students

The impairment provisions of the *Health Practitioner Regulation National Law (NSW)* also apply to medical students. The primary objective of the Program as it applies to medical students is public protection. A clear secondary objective is ensuring that the student's transition into the medical workforce is assisted and supported.

Early notification is seen as essential in supporting the impaired student, and planning his or her transition to internship.

There were eight medical students notified to the Council during 2010/11. Four of these notifications were made by universities, and three as a result of hospital admissions. There were no self-notifications in the reporting period.

As at 30 June 2011, there were three interns and two medical students involved in the Health Program. Two of these interns were notified to the Council after they commenced their internship.

## Conclusion

The strengths of the Council's Health Program include:

- → its focus on regulation with treatment provided independently;
- → its acceptance by the profession as a consistent program that achieves its public protection goals in a fair and objective way;
- → its structured but non-disciplinary nature;
- → its cautious, long term monitoring of impaired practitioners;
- → its flexible integration with all other Council activities such that every decision about a practitioner is made in full knowledge of their health status.

# > performance

## 2010-2011 **in summary**

- → The Health Care Complaints Commission (HCCC) referred 208 complaints to the Medical Council of New South Wales (the Council) as performance matters.
- → 61 complaints were referred for a Performance Interview compared to 57 in the previous year, reflecting the increasing trend to use an interview as an alternative to Performance Assessment or as an intermediate step in decisions to conduct an assessment.
- → 26 Performance Assessments were conducted as well as two Re-Assessments.
- → 11 Performance Review Panels were held.

## Overview

The Council aims to ensure that medical practitioners are fit to practise, and its Performance Program, introduced in NSW in October 2000 (the first in Australia), is central to this aim. The Program complements the Council's Conduct and Health pathways by providing a means of dealing with medical practitioners who are neither impaired nor have engaged in professional misconduct, but for whom the Council has concerns about the standard of their clinical performance.

The Program ensures education and retraining where inadequacies are identified, with public protection paramount at all times. A Performance Assessment (PA) is broad-based and is not limited to the particulars of the matter that triggered the assessment. The assessment is conducted in the medical practitioner's practice and the contribution of system issues to his/her performance difficulties can also be considered.

The professional performance of a registered medical practitioner is defined to be unsatisfactory if it is below the standard reasonably expected of a practitioner of an equivalent level of training or experience. In addition, the Medical Board of Australia's "Good Medical Practice: A Code of Conduct for Doctors in Australia" sets out relevant expectations of registered medical practitioners in its document.

Many factors influence a medical practitioner's performance. Once poor performance has been identified, the Council may implement a range of means to support improvement, including education and mentoring, as well as public protection measures, such as supervision and limits on practice.

## Program activity

There were a total of 31 new entrants to the Performance Program in the current reporting year.

An overview of the Performance Program activity in 2010/11 compared with previous years follows.

### Complaints

Under the co-regulatory model, the Council and the HCCC are required to consult on the action to be taken in regard to complaints received by either body or referred by the Australian Health Practitioner Regulation Agency (AHPRA). This has been upheld with the implementation of the *Health Practitioner Regulation National Law (NSW)*. In 2010/11, 208 complaints were referred to the Council from the HCCC as performance matters.

### Outcomes of complaints

The Performance Program provides a timely mechanism by which complaints can be managed and resolved with an appropriate intervention. The Council may consider a range of actions in response to performance matters that come to the Council's attention. In 2010/11, 182 complaints were considered by the Council.

The following table reports the outcomes of complaints referred to the Council by the HCCC:

**Outcome of complaints referred to the Council by the HCCC**

| | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|
| No further action | 99 | 73 | 63 |
| Letter of apology to patient | 11 | 9 | 2 |
| Board/Council letter | 34 | 42 | 42 |
| Performance Interview | 54 | 57 | 61 |
| Performance Assessment | 13 | 8 | 5 |
| Section 140B/Section 40P – consent to conditions | 1 | 0 | 0 |
| Section 66/Section 150 proceedings | 0 | 0 | 2 |
| Refer to Health Committee | 2 | 0 | 0 |
| Refer to Conduct Committee | 1 | 1 | 4 |
| Refer to HCCC for investigation | 4 | 0 | 0 |
| HCCC for resolution/conciliation | 4 | 4 | 3 |
| **Total** | **223** | **194** | **182** |

Of the 32 Performance Interviews concluded in the year, 14 resulted in no further action, as the Council was satisfied that the issues of concern had been adequately addressed in the interview. A further 15 resulted in Performance Assessments and three were referred to the disciplinary pathway.

### Performance Assessments

Performance Assessment (PA) is one of the approaches that the Council may take in response to a concern about a practitioner's performance. In a small number of cases (five in 2010/11), the decision to hold a Performance Assessment is based on the triggering complaint alone. In the majority of cases, the practitioner has attended a Performance Interview or is involved in another Council process prior to referral to a PA.

The following table reports the source of matters considered for PA.

**Source of matters referred for Performance Assessment**

| | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|
| Council Committee (Health, Conduct) | 5 | 6 | 9 |
| Referred because of an imposed condition | 4 | 2 | 5 |
| Complaint originating from: | | | |
| i. Patient or relative of patient | 10 | 22 | 13 |
| ii. Employer | 1 | 2 | 3 |
| iii. Colleague | 6 | 3 | 4 |
| iv. Other | 2 | 2 | 1 |
| **Total** | **28** | **37** | **35** |

The following table reports the professional background of medical practitioners considered for PA. As expected, general practitioners make up the majority, reflecting their proportionate number in the medical workforce.

**Practice area of medical practitioners referred for Performance Assessment**

| | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|
| Anaesthetist | 1 | 1 | 0 |
| Cosmetic proceduralist | n/a | 2 | 0 |
| General practitioner | 14 | 20 | 27 |
| Hospital Non-Specialist | n/a | n/a | 3 |
| Obstetrician & gynaecologist | 2 | 4 | 2 |
| Ophthalmologist | 1 | 0 | 0 |
| Physician | 1 | 2 | 1 |
| Psychiatrist | 4 | 1 | 0 |
| Surgeon | 5 | 6 | 2 |
| **Total** | **28** | **36** | **35** |

## Performance Assessments conducted

PAs are conducted in the practitioner's environment by two or three practitioners familiar with the area of practice. The assessment is broad-based and is not limited to the particulars of the matter that triggered the assessment. Multiple assessment tools are used, including the observation of consultations and procedures, a review of records and a clinical practice interview.

Once the report of a PA is received, a number of options are available to the Performance Committee. When the assessors do not identify performance deficiencies, no further action is taken in relation to the practitioner. In cases where minor concerns are raised, the assessors may counsel and advise the practitioner during the assessment. More formal counselling can occur when there are more significant performance issues that do not require the Council to order remediation, but that need to be drawn to the practitioner's attention. If remediation is required, or if there are issues of public protection, then a Performance Review Panel is convened.

In 2010/11, 25 PAs commenced, 26 PAs were finalised (concluded), and two practitioners retired or changed to non-practising registration prior to an assessment being undertaken. The following table summarises the outcomes of the finalised and cancelled assessments.

**Performance Assessment outcomes**

| | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|
| Retired or non-practising before having PA | 3 | 3 | 2 |
| Section 66/section 150 | 2 | 1 | 4 |
| No further action | 5 | 7 | 4 |
| Counselling | 0 | 2 | 3 |
| Consent to conditions under section 140B/section 41P | 1 | 1 | 3 |
| Performance Review Panel | 11 | 9 | 12 |
| **Total** | **22** | **23** | **28** |

## Performance Review Panels

A Performance Review Panel (PRP) is convened if the PA concludes that the practitioner's professional performance is unsatisfactory and orders requiring remediation are likely. The practitioner concerned has an opportunity to respond to the assessment findings and make submissions about any likely orders. In circumstances in which there is ongoing concern, the Panel may impose conditions on a practitioner's registration. Conditions may relate to remediation or public protection or both.

Remediation orders may include the practitioner's attendance at courses, spending time observing another medical practitioner or engaging in additional Continuing Professional Development activities.

Orders imposed for public protection may include limitation of the scope of practice or a requirement for supervision.

The following table reports the outcomes of PRPs held and completed during the reporting period.

**Performance Review Panel (PRP) outcomes**

| | | 2008/09 | 2009/10 | 2010/11 |
|---|---|---|---|---|
| PRP completed | | 11 | 10 | 11 |
| Outcome: | no orders | 0 | 1 | 1 |
| | remediation orders | 7 | 3 | 4 |
| | protective orders | 11 | 9 | 7 |

On one occasion, both in this reporting year and the previous year, a medical practitioner was able to demonstrate that conditions did not need to be imposed as the practitioner has rectified the deficiencies identified following the PA.

Conditions may be removed after the practitioner has satisfactorily completed any remediation or has been re-assessed. The performance of two practitioners was re-assessed in 2010/11.

## Conclusion

The range of options that is available to the Performance Committee in response to a complaint or notification reflects the spectrum of performance difficulties that present to the Council. The increasing use of the Performance pathway is an indication of its success and points to a significant shift in the balance of non-disciplinary and disciplinary approaches to matters that come to the Council's attention.

The strengths of the Council's Performance Program include:

- its acceptance by the profession as a fair and objective process;
- its non-disciplinary, remediation focus;
- its broad-based outcomes that result in lasting improvement in the doctor's performance.

As the initiator of Performance Assessment in Australia and an acknowledged international leader in this field, the Council remains committed to continuing this innovative and effective program and seeks to build upon its strengths and integrity.

# > monitoring

## 2010-2011 **in summary**

- → The compliance of 232 medical practitioners with conditions on their registration was under active monitoring by the Medical Council of New South Wales (the Council) as at 30 June 2011.
- → 57 new cases were referred to the Council's Monitoring Section during the year and 73 became inactive during the year.
- → Of the latter 73 cases, 17 were transferred to other States, eight were suspended or de-registered, 12 either failed to renew or changed their registration to non-practising, and 36 completed all conditions satisfactorily.

The Council's Monitoring Program is responsible for the monitoring of compliance with all Practice Conditions resulting from an outcome of the Performance, Conduct or Health pathways.

Monitoring of compliance with Health Conditions on a practitioner's registration, except for any drug testing and alcohol testing requirements, is the responsibility of the Health Program Section and is undertaken primarily through the practitioner's regular assessment by Council appointed practitioners and attendance at Council Review Interviews.

## The monitoring process

For each new Monitoring Program case, the responsible Program Officer makes initial contact with the practitioner to detail and clarify all compliance requirements. An action schedule covering all active conditions is then established and regularly updated. Subsequent monitoring activity includes:

- → the processing of approvals by delegates of the appropriate Committee, for example, to approve employment positions, supervisors, mentors and courses;
- → the design and provision of reporting templates to reporting practitioners, the assessment of reports as they are received and referral to the appropriate Committee if concerns are indicated;
- → arranging of audits (27 in this reporting year) and referral of audit reports to the responsible Committee;
- → where applicable, requests for and review of data from Medicare Australia or from NSW Health Pharmaceutical Services to check on the practitioner's prescribing or patient consultation restrictions;
- → preparing submissions for the appropriate Committee agenda on questions of satisfactory compliance with a condition, variation or removal of a condition, or breach of a condition;
- → follow up on Committee resolutions which may range from removal of all conditions to the lodging of a complaint with the Health Care Complaints Commission (HCCC);
- → liaison with the HCCC on cases where conditions are in effect while a complaint is under investigation and providing periodic updates on the practitioner's compliance history;
- → maintenance of ongoing contact with the practitioner and on occasion with third parties such as an employer or a supervisor, to facilitate and optimise compliance wherever possible.

The level, complexity and duration of monitoring activity will vary considerably over the range of cases administered by the Program. Some cases may require no more than a periodic letter to confirm the practitioner's circumstances. Others require more frequent contact and scrutiny. The efficiency and effectiveness of the monitoring function overall is dependent to a considerable degree on the quality and relevance of the conditions themselves. Hearing members responsible for the drafting of conditions are encouraged to discuss the monitorability of conditions proposed, as the chosen wording can have considerable impact on the practitioner's ability to comply and on the Program's ability to monitor compliance. A Conditions Bank developed by the Program provides a resource for all hearing members and panellists in that regard.

## System enhancements

During this reporting year, the Program welcomed the implementation of new capabilities built into the Monitoring Management Module within the Council's database of registrants. The developments include an electronic check of Medicare data and comprehensive data recording, including custodian details (supervisors, mentors, notifiers and assessors) and employment locations in respect of all practitioners with conditions requiring approvals by the Council.

## Drug and alcohol testing

Throughout the reporting year, the Program has continued to receive and record urine drug testing (UDT) results through the automated electronic system link between PaLMS Toxicology Unit and the Council's database, a highly successful innovation first introduced in 2009/2010. Blood alcohol testing (CDT) results continue to be received and recorded manually. In the current reporting year a new alcohol testing regime based on urine samples, Ethyl Glucuronide (EtG), was offered by Concord Hospital and accepted by the Council for use in conjunction with conditions requiring total alcohol abstinence. The CDT testing remains for cases of limited alcohol consumption.

## Critical compliance conditions

Critical compliance provisions, whereby a practitioner faces suspension as an immediate consequence of non-compliance with a condition so designated, were first introduced into the *Medical Practice Act* in 2008 and have been mirrored in the *Health Practitioner Regulation National Law (NSW)*. At the beginning of the reporting year there were two active cases subject to critical compliance conditions. A third practitioner, de-registered by the Medical Tribunal during the previous year for failure to comply, had his registration (including his critical compliance conditions) restored by the Tribunal in October 2010 and in June 2011. A fourth practitioner became subject to a critical compliance condition, one of several conditions imposed by a Professional Standards Committee decision. That practitioner subsequently moved to non-practising registration. As of 30 June 2011, the Monitoring Program was dealing with a total of three practitioners with active critical compliance conditions on their registration. The mandatory nature of such conditions as well as the consequence of a breach is routinely explained in detail to the medical practitioner.

## In summary

As at 30 June 2011, there was a total of 232 cases under active monitoring by the Program, a net decrease of 16 in the total as at 30 June 2010. The totals according to sole or primary source of conditions are as follows:

| Sole or primary source of conditions | New cases in 2010-11 | New cases in 2009-10 | Total active cases 2010-11 | Total active cases 2009-10 |
|---|---|---|---|---|
| Health Program | **19** | 35* | **97** | 102 |
| Performance Program | **4** | 8 | **19** | 20 |
| Conduct Program | **34** | 40* | **116** | 126 |
| **Total** | **57** | **83** | **232** | **248** |

*Incorrectly reported as 30 new cases (from Health) and 37 (from Conduct) in the NSW Medical Board Annual Report 2010

The Monitoring Program continues to provide strength to the Council's authority in relation to the various outcomes from disciplinary and non-disciplinary bodies and committees by:

- ensuring compliance by practitioners with conditions on registration and follow-up when difficulties or non-compliance occurs;
- alerting the Council's Committees and Legal Section when non-compliance or breach of conditions has become an issue;
- providing advice to legal officers assisting determining bodies on the monitorability of proposed conditions;
- providing information and advice to assist practitioners in meeting the requirements of conditions imposed on their registration.

# Independent Auditor's Report
# Medical Council of New South Wales

To Members of the New South Wales Parliament

I have audited the accompanying financial statements of the Medical Council of New South Wales (the Council), which comprises the statement of financial position as at 30 June 2011, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, notes comprising a summary of significant accounting policies and other explanatory information.

## Auditor's Opinion

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Council as at 30 June 2011, and of its financial performance for the year then ended in accordance with Australian Accounting Standards
- are in accordance with section 41B of the *Public Finance and Audit Act 1983* (the PF&A Act) and the Public Finance and Audit Regulation 2010.

My opinion should be read in conjunction with the rest of this report.

## The Council's Responsibility for the Financial Statements

The members of the Council are responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards and the PF&A Act and for such internal control as the members of the Council determine is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

## Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I conducted my audit in accordance with Australian Auditing Standards. Those standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the members of the Council, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

My opinion does *not* provide assurance:

- about the future viability of the Council
- that it has carried out its activities effectively, efficiently and economically
- about the effectiveness of its internal control
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about any other information which may have been hyperlinked to/from the financial statements.

## Independence

In conducting my audit, I have complied with the independence requirements of the Australian Auditing Standards and other relevant ethical pronouncements. The PF&A Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their role by the possibility of losing clients or income.

Peter Barnes
Director, Financial Audit Services

21 November 2011
SYDNEY

# MEDICAL COUNCIL OF NEW SOUTH WALES

## STATEMENT BY MEMBERS OF THE COUNCIL

## FOR YEAR ENDED 30 JUNE 2011

Pursuant to section 41C(1B) *Public Finance and Audit Act 1983*, and in accordance with the resolution of the members of the Medical Council of New South Wales, we declare on behalf of the Council that in our opinion:

1. The accompanying financial statements exhibit a true and fair view of the financial position of the Medical Council of New South Wales as at 30 June 2011 and financial performance for the year then ended.

2. The financial statements have been prepared in accordance with the provisions of Australian Accounting Standards, Accounting Interpretations, the *Public Finance and Audit Act 1983*, the *Public Finance and Audit Regulation 2010* and the Treasurer's Directions.

Further, we are not aware of any circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

President

Deputy President

17 November 2011