



COLLEGE SUBMISSION

August 2016

We would like to thank the Committee for providing the College the opportunity to submit to this inquiry on behalf of our members.

The College recognises and values the Health Ombudsman's office as a mechanism to ensure that patients can receive the highest quality care and have access to natural justice. Our members have indicated however that there are aspects of the Office's processes which they feel are unduly difficult and inequitable and we welcome the opportunity to present their concerns for your consideration.

About ACRRM

The Australian College of Rural and Remote Medicine (ACRRM) is devoted to the advancement of medical care in rural and remote communities. It progresses this through provision of training and professional development for rural doctors; by defining and upholding standards for rural best practice; and through providing support and advocacy services for rural doctors and the communities they serve.

ACRRM is one of two professional Colleges recognised by the Australian Medical Council to provide training towards Fellowship in the specialty of general practice. To ensure highest quality care is available in rural and remote communities our Fellows must attain a unique, expanded scope of practice. ACRRM doctors are thus able to provide comprehensive primary care as well as specialist, or near specialist-level services in areas such as obstetrics, mental health, emergency medicine and anaesthetics.

The ACRRM Fellowship qualification reflects attainment of the essential skills for work as a Rural Generalist and our College represents some 4000 Rural Generalist doctors and doctors-in-training across the country.

Onus of responsibilities to respond to complaints

Our membership has concerns that the compliance requirements imposed upon the practitioner in responding to any claim that may be made against them are unduly onerous and inequitable.

In particular our members report the following:

- Being given two weeks to respond. This timeframe is unnecessarily disruptive to their practice and also undermines doctors' ability to seek appropriate legal support. It is not uncommon for our doctors to need to access records from hospitals outside their practice which may practically take most of this time.
- Being called and advised of the complaint without warning during their practice hours and without the benefit of a written explanation, or the opportunity of seeking legal advice prior to speaking to the Office. Doctors must then rely on their memory of the phone conversation in order to communicate their situation to their legal defence organisation.

- Doctors that have complaints lodged against them being required to access and collate hospital records which presumably could have been more easily accessed by the Office themselves at which point they may have been able to establish that the complaint was unfounded.

There appears to be no pre-examination of the merit or veracity of any given complaint prior to requiring the doctor to engage in their personal defence. Despite the complaint being untested therefore, there appears to be a general understanding that the onus is on the doctor to prove their innocence. Members have concern regarding the application of the principles of natural justice relating to their perspective as well as that of the complainant.

This means that however patently baseless the claim may be the process will impose the same rigorous reporting standards upon the doctor receiving the complaint. Scurrilous and vexatious claims do occur and there are circumstances where there may be considerable incentive to bring such claims. It could be contended that vexatious claims could be very quickly and easily disproven and resolved with a brief review and cross-check of hospital records prior to approaching the doctor. This would potentially limit the adverse reputational effect of such claims on the doctor's practice and limit any defamatory implications.

Recommendations:

- *That the Inquiry consider requiring the Ombudsman's office to do an initial check of complaints to determine they are not vexatious or unfounded, prior to pursuing them with the doctor who is the subject of the complaint, particularly where they involve public hospital records.*
- *That the Inquiry considers extending the time-frame given to doctors to respond to complaints against them, in particular to ensure they are given an acceptable time to obtain legal guidance.*
- *That the Inquiry consider that the Ombudsman's office inform doctors that a complaint has been brought against them in writing rather than by phone.*

Classification and recording of unsubstantiated claims

The College would like to also express its concern regarding the practice of keeping a formal record of a complaint claim on a practitioner's file even where it has not been established that any case against the practitioner ever existed.

Our members have reported having had relatively minor complaints brought against them and being advised during the brief period in which they were required to respond that the complainant had withdrawn the complaint.

Despite the fact that the complainant themselves had determined that no case existed against the practitioner - the Ombudsman's Office advised the doctor that the Complaint would remain on their permanent record, classified as an 'Unsubstantiated Complaint'. This title is a misrepresentation as clearly the act of a complainant withdrawing the complaint has substantiated its status as void.

It is reasonable to expect that should any future complaints be raised against a doctor in this circumstance, the presence of any complaint on their file, particularly one marked 'unsubstantiated', would be viewed as further corroboration of any new complaint.

Recommendation:

- *That complaints to the Office that have been withdrawn by a complainant should be acknowledged as having no status in the Ombudsman's Office process. These should be referred to accurately as 'withdrawn complaints' and ideally not recorded at all as this would reflect the wishes of the complainant themselves. Should they be recorded – a clear policy should be established to ensure these are not used to support subsequent claims.*

College Contacts

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