

18 November 2008

Practitioner Regulation Subcommittee
GPO Box 4057
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Re: Submission to Consultation Paper "Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters"

We refer to your second consultation paper of 7 October 2008 inviting comments on the Discussion Paper "Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters". We ask that you accept this submission.

Maternity Coalition (MC) is a national umbrella body for maternity consumers in Australia, working collaboratively with the full range of maternity consumer groups across the country. As such MC represents many women and their families united in the desire for reform of maternity services, in particular an enhancement of 1-2-1 midwifery care.

We have read the Consultation paper and would like to comment as follows:

- 1.5 Principles

Proposal 1.5.1: It is proposed that the provisions of the legislation relating to the management of complaints and matters of conduct, health and performance be framed in a way that:

- a. provides for a robust system to protect public safety that deals effectively with complaints, conduct, health and performance matters and focuses on prevention and early intervention*
- b. builds on the best aspects of State and Territory schemes, rather than replicating one existing disciplinary scheme*
- c. balances the rights and interests of consumers with those of health practitioners*
- d. is compatible with nationally and internally accepted standards and consistent with Australia's international obligations, and*
- e. reflects the wording and intent of the Intergovernmental Agreement.*

We have some concerns around "c". We feel the use of the words "balance" and "interests" is unclear. Consumers' and practitioners' interests relate to different areas and the balance must be in each being able to maintain personal autonomy. Each health practitioner needs to be able to do what they think is ethical and the consumer needs to be able to do what they feel safe with. eg. Caregivers must not feel pressured into practice they consider to be inappropriate, unethical, unprofessional or beyond the scope of their skills or practice, while consumers right to be the final arbiter on their own health care must be respected.

2. Proposed terminology and definitions - see Attachment 1: Draft definitions of 'unsatisfactory professional conduct', 'unsatisfactory professional performance' and 'professional misconduct' proposed for inclusion in the national legislation. 'professional misconduct' includes -

- a) unsatisfactory professional conduct of a health practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence (insert): including*

respectful communication with patients and colleagues and seeking and gaining informed consent from patients before undertaking any test, procedure or intervention.

b) conduct that violates or falls short of, to a substantial degree, the standard of professional conduct observed by members of the profession of good repute or competency

c) conduct of a health practitioner, whether occurring in connection with the practice of the health practitioner's health profession, or occurring otherwise than in connection with the practice of a health profession, that would, if established, justify a finding that the practitioner is not of good character or is otherwise not a fit and proper person to engage in the practice of that health profession.

From a consumer perspective, the issue of consent needs to be included in the definition of "professional misconduct". Diligent processes in regards to good communication, consent and choice are, from a consumer perspective, core elements of good conduct. Feeling in control of your own health care is essential to women's sense of safety and every woman, baby and health care consumer have the right of autonomy of their body. At the core of our submission is that professional conduct in respect to consent, choice and information be given priority in proportion to its importance to consumers.

We are aware of two recent cases of investigations into the behaviour of health professionals. One where there was a raft of complaints by several women of serious misconduct against an obstetrician (behaviour that was in direct violation of women's expressed wishes). As we understand, this was labelled a "communication" issue and a Medical Board wouldn't investigate.

There needs to be uniformity in the treatment of professionals. We are aware of another case where there was no bad outcome, no consumer complaint (but problems with communication and hand over processes) and the midwife completely lost her registration.

- 3. Overview of proposed system

The three streams of the notifications management system are designed to achieve the public protection objective from different directions. The performance management stream and the health management stream aim to protect the public by identifying registrants whose practice or approach to practice causes concern but who have not caused harm to any person or potentially caused harm to a person, to address and overcome those matters of concern before harm or the potential for harm eventuates. These streams are proactive

We assume in some cases this would be dealt with by the employer prior to getting to a regulatory body. But this system will provide greater consumer protection in places with workforce shortages and also where professionals are in private practice. In maternity we have heard stories of where hospitals who have found it difficult to attract a suitable workforce come to accept standards of practice that normally are unacceptable to the clinicians' peers, management and consumers. We cannot trade off poor care for some care. Better to do no harm, than to cause harm while providing 'care' to local communities.

- 3.2 Key features of proposed system

Performance management

If the board's preliminary assessment has found evidence that the practitioner's performance may be unsatisfactory, then the board may refer the matter to a performance management committee.

*The role of the board or the performance management committee in such cases would be to oversee the assessment and management of poor performance. The board or the committee would have the power to appoint **an assessor or assessors** to undertake a performance assessment.*

We would like to see greater clarification around who this would be – eg. An impartial

interstate professional? We would want to see obstetricians assessing obstetric cases, midwives assessing midwifery cases (not nurses or obstetricians assessing midwifery cases).

- 4.4 Mandatory reporting obligations

We strongly agree with Option 1.b & 2.b (extended obligations).

Registrants would only be expected to report major departures from professional standards where it is within their competence to make such a judgement.

This seems unclear – ie. If a midwife felt that an obstetrician was displaying professional misconduct, because she is not an obstetrician, could it be claimed she didn't have the "competence" to comment on his action? How do the boards identify and assess if it is a major or minor departure?

Student registrants and mandatory reporting

Interested parties are invited to advise on whether registered practitioners and/or educational institutions should be required to report registered students to their respective boards, and if so, for what types of matters. Advice is also sought on whether any reporting obligations should be placed on student registrants.

Both of these are vital for consumer protection. Practitioners and institutions must be required to report students if necessary. Students must absolutely have reporting obligations – often they are "fresh eyes" in a culture and are up to date on evidence-based practice. Empowering students to report through mandatory reporting will contribute to an increase in safety and quality. Students, like other registrants, will need good protection via systems/processes so it does not adversely affect their future career.

4.5 Protection for notifiers and registrants

Proposal 4.5.1: It is proposed that the legislation provide that a person making a notification is not liable for defamation because of the notification, and the making of a notification does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy. It is proposed that this protection extend to any person who, in good faith, provided the notifier with any information on the basis of which the notification was made, or was otherwise concerned with the making of the notification.

We agree with this.

- 4.7 Immediate suspension powers – We agree with the proposals.

- *Proposal 5.2.1: It is proposed that the legislation provide for boards to decide not to investigate a notification on the following grounds:*

- *the board determines the notification to be frivolous, vexatious, misconceived or lacking in substance, or*
- *given the amount of time (how much?) that has elapsed since the matter arose, it is not practicable for the board to investigate or otherwise deal with the matter, or*
- *the board determines the notification does not warrant investigation (why?), or*

- 6. Performance matters - Proposal 6.1.1: - We agree.

- 6.4 – Performance panel hearings - Proposal 6.4.1
That a panel must:

- - have at least one registrant member from the same profession as the practitioner
- - have at least one member who is not and has never been a registrant in a regulated health profession, and
- - have no more than half of the members being registrants from the profession concerned

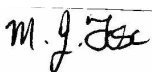
The make up of the assessment panel must be carefully considered – should contain appropriate, non-biased professionals, preferably some from interstate. It needs to contain professionals from the registrant’s particular area of practice eg. not just a midwife but a midwife in private practice, not just a chiropractor but a paediatric chiropractor. Shouldn’t be based just on opinion of a professional or on “current practice” - must be evidence-based practice.

Needs to contain at least one, if not two consumers. These consumers should be connected to and supported by a consumer organisation (not a “stand-alone” consumer) so that they are aware of current issues especially regarding quality and safety.

- *8.2 – Conduct management* – Who would be the investigator? How would the investigation be conducted? They should interview the consumer directly and if possible, appropriate family members of the consumer, not rely on medical notes (which may be incorrect).
- ***Timelines for the conduct of investigations - Proposal 8.3.5*** - We agree. Process needs to be done in timely fashion ie not over 2-3 years due to time it takes to do investigative report.
- ***Proposal 8.5.1***: - see our comments re. 6.4 as to the makeup of panels.
- ***Proposal 10.6.1***: - see our comments re. 6.4 as to the makeup of panels.

We thank you for the opportunity to provide a submission. We would welcome the opportunity for further dialogue.

Yours sincerely



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