



The Royal Australasian
College of Physicians

14 Nov. 08

Practitioner Regulation Subcommittee
Health Workforce Principal Committee
Australian Health Ministers' Advisory Council

Dear Sir / Madam

Please find attached a submission on behalf of the Royal Australasian College of Physicians on the Consultation Paper:

“Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters.”

The College is pleased to be involved in this consultation process and should your Subcommittee wish to consult further with the College on these matters please do not hesitate to contact us.

Yours sincerely

**Greg Armstrong RN MPH
Senior Policy & Project Officer**

**National Registration and Accreditation Scheme –
Proposed arrangements for handling complaints, and dealing with
performance, health and conduct matters.**

**Submission on behalf of
The Royal Australasian College of Physicians**

14 November 2008

Introduction

The Royal Australasian College of Physicians supports the principle of national registration and national accreditation and believes there are benefits to be gained from their implementation. The College has undertaken a review of the Consultation Paper – Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters” - and feels that there are a number of proposals that require its comment.

The College supports the principles that the system must balance the rights and interests of consumers with those of health practitioners and that the system must be a robust one that protects public safety yet deals effectively with complaints. It also supports the recognition that not all notifications will arise from matters of misconduct and that mechanisms have been proposed to address issues of practitioner health and performance and that in these areas it focuses on prevention and early intervention.

In relation to more specific areas and proposals contained within the Consultation Paper the College position on these matters is set out below.

2. Proposed Terminology

2.1.7 – Performance Panel

Though the paper provides for the development of a panel which will hear and determine matters relating to performance (competence), it is noted that there is no reference to standards against which this competency is measured. In particular there is no reference to the standards that a College or other professional body has set, which are effectively the agreed performance benchmarks for specialists or practitioners.

From the RACP perspective it should be explicit that postgraduate colleges, which provide the qualification for specialists, are significantly involved in this element of performance and competency.

4. Notifications

4.3 What sort of matter may be the subject of a notification

Proposal 4.3.1: re. Grounds on which a notification may be made about a registered health practitioner.

- the registrant’s capacity to practice is affected because of:

- physical or mental impairment, or
- habitual ***inappropriate*** use of alcohol or other ***recreational or pharmaceutical*** drugs, or

- the registrant lacks the competence to practice because of insufficient knowledge and skill ***of the registrants profession which may*** include communication skills (such as competency in the English language),

The College recommends the above changes be made to this section. Habitual use does not quantify the amount used nor the frequency of the habit ie one can habitually consume one glass of wine every Saturday evening. Likewise there is no point of reference for - insufficient knowledge and skill.

4.4 Mandatory reporting obligations (Pg 15 – Student Registrants)

Although it would seem that this proposal is related to the registration of undergraduate students (“student registrants”) it is not clear that it will not also apply to educational institutions such as the College who’s

students are already registered practitioners. Given that our trainees are employed by health jurisdictions, it is the current view of the College that any issues relating to poor performance by trainees should be dealt with through the standard pathway as administered by the trainee's employer, without the additional involvement of the educational institution i.e. the College. If the national boards wish to request information on matters involving a trainee from the College, then this needs to be specifically and explicitly stated. The nature of any such enquiry would also need to be stated; the protection afforded by the College to the trainee in all their dealings with the College and the training matters needs to be clear and explicit. At present this is not the case.

It is the view of the College that issues of poor performance by College trainees should be dealt with through the standard employer-related pathway.

4.7 Immediate suspension powers

Proposal 4.7.1: It is proposed that the legislation include provisions that empower a responsible board or a notifications assessment committee to immediately suspend the registration of a practitioner for a period of up to three months, and to impose a second or subsequent period if it considers the registrant's continued practice poses a significant risk to public health and safety and the proceedings have not yet been finalised.

In the interest of fairness to the registrant this proposal should include a time-limited review mechanism to ensure that proceedings are not being unduly delayed.

6. Performance matters

6.1 Overview of management and performance related matters

Proposal 6.1.1 re. legislative provision for boards to request a practitioner to undergo a performance assessment and/or to provide guidance and direction in regards to further education or supervised practice.

These are matters that fit squarely within the College's role. The College would have considerable difficulty with the notion that a health board would be involved in education and supervision of practice matters and consider that this should be referred to the College as it involves standards and standard setting for practice. This is something which Medical Colleges are involved with but not health boards in terms of performance matters.

It also needs to be clarified whether this is about performance (i.e. what a practitioner does in the workplace - habitual practice) or competence (what a practitioner can show they can do - artificial circumstances e.g. clinical exam).

6.3 Performance assessments

Proposal 6.3.1: It is proposed that the legislation would empower a board (or performance management committee of a board) to appoint one or a number of assessors, who are not members of the responsible board (or committee of the board), to conduct a performance assessment of the practitioner, and that the board would pay for the assessment.

In the case of the Medical Board it must be the relevant College that is appointed to conduct the performance assessment as it is the Colleges that set and evaluate standards of practice. It is also important that there is indemnity for assessors.

Proposal 6.3.2: It is proposed that the legislation would require the performance assessors to provide a report of the assessment to the board or performance management committee, and, within 7 days to the practitioner. The chair or nominee of the board or committee would be required under the legislation to discuss the report with the practitioner, and in the case of an adverse finding, possible ways of dealing with that finding, including whether the practitioner is prepared to alter the way they practise.

The College believes it should be the Board or the Performance Management Committee that is responsible for sending the report to the practitioner – not the assessor.

6.4 Performance panel hearings

Proposal 6.4.1: It is proposed that following referral of a matter for consideration as a performance matter, the legislation provide:

- 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 College believes that it is important that the performance panel be chaired by a registrant from the profession concerned.

6.5 Decisions available to performance panel following a hearing

Proposal 6.5.2: It is proposed that the legislation provide for a panel to consider reports from any previous performance assessments and where the panel considers the evidence demonstrates a pattern of poor performance sufficiently serious to warrant suspension or cancellation of registration, require the panel to refer the matter for hearing by the responsible State or Territory tribunal.

This proposal talks of a pattern of poor performance, however it should also allow for the possibility that a single notification / assessment of poor performance might be sufficient to warrant suspension.

7. Health or impairment matters

7.1 Overview of management of health related matters

Proposal 7.1.2: In addition to boards having the powers to conduct health assessments, deal cooperatively and flexibly with impaired registrants (rather than through the disciplinary stream) and monitor their compliance with conditions (if any) on their registration, it is proposed that the legislation provide for boards, at their discretion, to offer health programs for impaired registrants nationally.

It should be stated that the health programs or treatment is provided by a practitioner who is independent of the Board and provides feedback to the Board.

7.2 Health management

Proposal 7.2.2: re. the powers of the board or a health management committee following the receipt of a health assessment report.

The Health Management Committee should have the power to suspend the practitioner if the health assessment report, the assessor, or the Committee itself, has shown the practitioner to be uncooperative with the process or advice.

7.4 Health panel hearings

Proposal 7.4.1: re. the Board or Committee's ability to appoint a panel and refer to it for hearing a matter relating to the capacity of the registrant to practice, following a decision to handle a matter as a health management matter.

The proposed panel composition is:

- at least one registrant member from the same profession as the practitioner
- a member who is a registered medical practitioner with relevant expertise
- 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 (excluding the registered medical practitioner with relevant expertise in the case of a medical registrant)

The College believes that the registrant member from the same profession as the practitioner have a minimum length of practice, ie. 5 years and that there be an independent process of appointment.

8.5 Conduct panel hearings

Proposal 8.5.1: re. that following referral of a matter to a conduct management committee, the legislation provide for the board or committee to appoint, if it considers necessary, a panel to hear the matter.

The proposed panel composition is:

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

The College believes that the registrant member from the same profession as the practitioner have a minimum length of practice, ie. 5 years and that there be an independent process of appointment.

9. Ensuring accountability, transparency and procedural fairness

9.1 Achieving separation of functions

Proposal 9.1.1: The following options are suggested relating to the procedural fairness and public interest mechanisms in the scheme:

Option: 1 No additional provisions are required beyond the review, appeal and other mechanisms already described in this paper.

Option 2: Provisions that establish a statutory office, possibly within the national agency, to assess prosecution decisions, along the lines of the 'director of proceedings' in the *Health Care Complaints Act 1993* (NSW) and *Health and Disability Commissioner Act 1984* (NZ). The director of proceedings not the boards would make the decisions on referrals to tribunals.

Option 3: Provisions that establish a mechanism for automatic review of all board decisions on conduct matters in relation to whether or not they should be brought to a tribunal, with processes for resolution of disagreement between a board and the reviewer

The College supports OPTION 2 as it will provide a competent and independent review mechanism especially for cases that are of such a serious nature as to warrant referral to tribunals. It will add to the procedural fairness of the process.

9.3 Legal representation for registrants at panel hearings

There are a number of options with respect to legal representation:

Option 1: The legislation is silent on the matter of a registrant's right to legal representation at a board hearing.

Option 2: The legislation specifies that the registrant has the right to be legally represented at a board hearing.

Option 3a: The legislation specifies that the registrant has no right to be legally represented at a board hearing.

Option 3b: The legislation specifies that the registrant has no right to legal representation except with the leave of the panel.

Option 4a: The legislation specifies that the registrant has no right to legal representation, but can have a person who is not an Australian legal practitioner accompany them and, with the leave of the panel, that person may speak on their behalf.

The College supports OPTION 2 as it provides registrants (especially those who may be impaired) with representation and adds to the procedural fairness of the hearing.