



THE LAW SOCIETY
OF NEW SOUTH WALES

11 October 2011

Mr Ameer Tadros
Executive Officer
Medical Council of NSW
PO Box 104
GLADESVILLE NSW 1675

Dear Mr Tadros

Professional Standards Committees

The Law Society's Medico Legal Liaison Committee (the Committee) has asked that I write to you regarding the Professional Standards Committees (PSC), convened under Part 8 Division 11 of the *Health Practitioner Regulation National Law (NSW)* to hear complaints against medical practitioners.

The Committee consists of various representatives of the legal and medical professions, including from the Australian Medical Association and professional colleges and lawyers practising in medical disciplinary matters. The Committee wishes to draw to the Medical Council's attention various issues of a practical nature which have arisen in relation to the convening and scheduling of PSCs.

As you will appreciate, PSCs are convened to hear complaints against medical practitioners which may provide a basis for findings of unsatisfactory professional conduct. More 'serious' matters, namely those which may support findings of professional misconduct warranting deregistration, are prosecuted in the Medical Tribunal.

At present, following referral of a complaint to the Council for prosecution before a PSC, the Council will normally write to the NSW Health Care Complaints Commission (HCCC). The Council is deemed the nominal complainant, and the medical practitioner is the subject of the complaint. The Council must set out the following:

- an order for the HCCC to serve its evidence by a certain date (HCCC's evidence);
- an order for the medical practitioner to serve their evidence in reply approximately four weeks later (the practitioner's evidence);
- subsequent listings for return of documents and a telephone directions hearing, usually within a month of the scheduled hearing, and
- a listing for hearing, usually of two days duration.

From experience, Committee members are aware of the following issues which have arisen with the current arrangements:

- the standard timetable for the exchange of documents can sometimes provide insufficient time to obtain evidence, particularly if the matter is complex, involves multiple patients and/or the medical practitioner only obtains legal representation after a PSC is convened;

- where PSC delegates are appointed at an early stage, prior to evidence being exchanged, this can cause inconvenience for delegates if the matter has to be adjourned, such as where orders cannot be complied with and/or various lay or expert witnesses are unavailable to attend on the listed hearing date;
- the allocation of a hearing date before evidence is exchanged does not take into account possible problems with availability for certain witnesses, which can lead to a need to find a new date for the PSC, causing delay, and
- once evidence is exchanged, it can become apparent that the allocation of two days for hearing is insufficient, particularly where the matters are complex, involve multiple patients and/or expert witnesses are called to give evidence, resulting in matters that are often part-heard and adjourned to a later date for hearing, causing delay in determination of matters.

The Committee appreciates that it is only recently that legal practitioners have been permitted to represent medical practitioners at PSC hearings and are conscious of not making proceedings unnecessarily protracted or complicated. However, the Committee is concerned that these practical issues are causing unnecessary delays, expense and inconvenience, particularly to the medical profession.

The Committee proposes two alternate suggestions.

Alternative 1

The Committee suggests that these issues may be addressed by the Council reviewing its present practice following the appointment of a PSC of publishing a standard timetable providing for the exchange of evidence, a subsequent telephone directions hearing and a hearing date.

Instead, the Committee suggests the following practice:

- the matter be listed for a directions hearing soon after the establishment of the PSC (e.g. three to four weeks after the medical practitioner is notified of the proceedings);
- the first directions hearing would provide an opportunity to address the preliminary views of the parties in relation to issues in the matter, to make directions for the service of evidence and to allocate a date for a second directions hearing following exchange of the parties' evidence, and
- at the second directions hearing, the views of the parties on likely hearing length could be elicited and a hearing date, convenient to the PSC members and all parties, be set.

In this way, a PSC would adopt a similar procedure to that involved in Medical Tribunal matters.

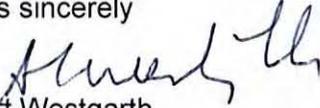
Alternative 2

The Committee suggests that these issues may be addressed by deferring the appointment of PSC delegates, scheduling of a PSC hearing and making of any further orders following a referral of complaint to the Council, until the parties have participated in a telephone directions hearing, e.g. three to four weeks after the medical practitioner is notified of the proceedings. This would then provide an opportunity to determine appropriate orders, available dates for hearing and likely hearing length. Giving the parties time to consider these issues should mean further information is available to the Council to allow it to make a more informed decision

about future conduct of the matter, avoiding as much as possible unnecessary delay, expense and inconvenience associated with unforeseen events.

The Law Society Policy Lawyer with responsibility for this issue is Patrick McCarthy. Please feel free to contact him on (02)9926 0323 should you wish to discuss the matter further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stuart Westgarth', written in a cursive style.

Stuart Westgarth
President