

22 February 2017

Committee Secretary
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Inquiry into complaints mechanism administered under the Health Practitioner Regulation National Law

The Royal Australian College of General Practitioners (RACGP) thanks the Senate Standing Committee on Community Affairs for the opportunity to comment as part of the inquiry into the *Complaints mechanism administered under the Health Practitioner Regulation National Law* (the complaints mechanism).

The RACGP represents over 35,000 members working in or towards a career in general practice and welcomes this opportunity to provide input into the complaints mechanism. In developing this submission, we have consulted with members to gain their input and experience of the current complaints system.

Many of the issues identified by members echo issues that were outlined in the final report of the initial senate enquiry into the medical complaints process in Australia¹, particularly regarding the lack of:

- an adequate process for vetting complaints
- appropriate medical knowledge and/or specialty experience of investigators and/or board members
- communication and transparency
- timeliness
- concern/recognition of the professional and personal consequences of investigations.

Overall, feedback from members indicates a perceived lack of balance in the system – where practitioners are subject to investigations that seemingly already assume guilt. The process, as it is currently administered, can be extremely stressful and onerous for medical practitioners. It involves a large time commitment from time-poor medical professionals and it can have significant reputational and professional consequences, regardless of whether the practitioner in question is at fault.

It is perceived that the current complaints mechanism is more concerned with the prosecution of practitioners than protecting patient safety through remediation of the issues that lead to the

¹ The Senate, Community Affairs References Committee. Medical complaints process in Australia. Canberra: Parliament House; 2016

complaint. The adversarial nature of the complaints mechanism can make practitioners question their clinical judgement, which could lead to different and possibly sub-standard management of a patient's health. The stress experienced by practitioners resulting from a lengthy investigative process can also risk patient safety. It must be recognised that in order to put patient safety first, a fair and supportive complaints mechanism is essential.

The sections below summarise the feedback received from RACGP members.

1. Vexatious complaints

A key concern of RACGP members was the apparent inability for the complaints mechanism to sufficiently vet complaints so that vexatious complaints are filtered out.

The complaints mechanism requires a large time commitment by a practitioner to formulate the necessary response. Even if found innocent, the effect of the distress caused by the complaints process can remain for the practitioner.

RACGP members also described the difficulty of formulating a response to complaints that lack substance, particularly in circumstances where the evidence is limited to differing interpretations of what transpired during a consultation.

Recommendation 1.1: A better process for vetting complaints must be developed. This could involve complaints being screened by individuals with a relevant medical background in the speciality of the complaint.

Recommendation 1.2: A process should be put in place to deter and penalise submission of vexatious complaints.

2. Qualification and relevant medical experience of board members

A recurrent concern raised by members is that Australian Health Practitioner Regulation Agency (AHPRA) investigators and/or Medical Board members do not have sufficient medical experience and/or knowledge of general practice to understand the nature or seriousness of a complaint.

Concerns regarding qualifications of investigators and Medical Board members were raised in the context of vetting, investigating and assessing complaints.

The Medical Board of Australia is arguably the most diverse of all 14 National Boards, covering a large range of medical specialities. The RACGP recognises that this wide scope makes it inherently difficult for the Medical Board to represent all facets of the medical profession. However, in order for medical practitioners to receive a fair investigation, all cases should be assessed by a medical practitioner with in-depth knowledge and relevant experience in the specialty concerned.

Recommendation 2.1: A wider pool of medical practitioners should be sourced to ensure that cases are reviewed by practitioners who have an in-depth understanding of the relevant speciality.

3. Communication and transparency

RACGP members raised concerns about communication and transparency during the complaints process.

Lack of clear process

The RACGP was informed of multiple circumstances where practitioners did not receive information outlining what to expect from the complaints process or when to expect further communication after being issued a notification of a complaint. This uncertainty has caused significant distress for those involved.

The RACGP also heard that practitioners are often contacted about the case by a different AHPRA representative each time. This can be unsettling for the practitioners involved with the complaint, as there is a perceived lack of continuity of knowledge regarding the practitioner's circumstances. It would be beneficial for the complaints mechanism to assign case officers/managers to each complaint or, if this approach is already in place, strengthen the continuity of those contacting and managing each complaint. Such an approach would ensure that practitioners involved in a case have one direct contact who is familiar with the details of the case.

Arbitrary justification of investigation

We have received feedback regarding circumstances where practitioners have not been informed as to why they are being investigated, despite requesting a reason. The RACGP understands that after a notification of a complaint is accepted, AHPRA will generally send the relevant practitioner a copy of the notification unless it would prejudice the investigation or place a person at risk.

All necessary steps should be taken to ensure the relevant practitioner is informed of the nature of the complaint to minimise unnecessary stress and uncertainty for the practitioner.

Security of communication

RACGP members raised concerns regarding the lack of security surrounding the collection of information relating to a case, noting that they have been asked to supply information via email. Practitioners are concerned that they may be vulnerable to further prosecution for sharing patient information via an unsecure network.

The RACGP *Computer and information security standards for general practices and other office-based practices* (CISS) notes that confidential information should not be sent via unsecure email. A secure system for sharing information should be developed or at a minimum, instructions should be given to practitioners regarding how to send encrypted emails.

Appeals process

The RACGP has been informed of circumstances where details of a complaint, including findings of the investigation, have been published online prior to completion of an appeals process. This is of particular concern to the speciality of general practice as general practitioners operate in a small business environment characterised by patient choice and competition between providers. A practitioner's business may be significantly affected by conditions that are published online and available for patients to access if it is done so prematurely. If the appeals process concludes that the practitioner is not at fault, the published conditions could have already jeopardised the reputation of the business.

Recommendation 3.1: A clearly defined process regarding the complaints mechanism should be developed and circulated to practitioners after they received a notification of a complaint, so that they are aware of what to expect and when to expect communication.

Recommendation 3.3: A secure method of providing confidential case related information should be developed to protect both patients and practitioners involved in a complaint.

Recommendation 3.4: Online publication of practitioner conditions should not occur unless the process, including appeals, has been completed. In circumstances where an appeal is raised after the conditions have been published, conditions should be immediately removed from online platforms.

4. Timeliness

Another issue raised by members was the length of time it takes to complete an investigation. The RACGP understands that AHPRA aim to complete investigations within six months. However, some investigations are extended depending on complexity. RACGP members have reported instances where investigations have spanned several years.

As identified in the Senate report on the medical complaints process in Australia, timeliness is an important factor for both the safety of patients and the wellbeing of competent practitioners who have been falsely accused.

5. Complaints against registrars

The RACGP has been advised that registrars in early stages of the training program have received a notification of a complaint noting that they require further training and education in certain areas of practice. It appears that these complaints could first be addressed by the relevant training provider and supervisors, rather than through the complaints mechanism.

Recommendation 5.1: Where local remediation processes exist, these should be utilised prior to escalation through the complaints mechanism under the National Law. AHPRA could have a role in advising the complainant of these processes.

6. Wellbeing of practitioners

The issues outlined above represent RACGP member concerns regarding the complaints mechanism. These issues contribute to the significant stress experienced by a practitioner involved in the medical complaints process.

Members have raised concerns relating to the lack of support for practitioners under the complaints mechanism. At a minimum, the administrators of the complaints mechanism should acknowledge that the process can be stressful for practitioners and provide them with a list of support mechanisms and organisation contact details. Awareness of available support mechanisms is especially important for rural and remote medical practitioners, as well as international medical graduates, who are relatively isolated and have less of a support network available to them.

The RACGP is committed to supporting members in their pursuit of clinical excellence and ensuring that general practice remains a satisfying and rewarding vocation. The RACGP offers a GP Support Program, which is a free service where members can access professional advice to help cope with

life stressors. Medical practitioners involved in the complaints process should be advised of such services when issued a notification of a complaint.

It is important for administrators of the complaints mechanism to recognise that where practitioner wellbeing is affected, patient safety is at risk.

Recommendation 6.1: Practitioners should be sent a list of support mechanisms/organisations that can support them while they are going through the complaints process.

If you would like additional information about the RACGP's response to the senate inquiry, please contact me or Mr Roald Versteeg, Manager – Advocacy and Policy on 03 8699 0408 or roald.versteeg@racgp.org.au

Yours sincerely



Dr Edwin Kruys
Vice-President