



Avant Position Paper

Handling professional conduct
complaints against doctors

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Avant supports:

- ▶ a nationally consistent approach to complaints handling, not only in terms of process but also in terms of outcomes
- ▶ a responsive, risk-based approach to managing complaints against medical practitioners
- ▶ effective, fair and transparent management of complaints including:
 - appropriate triaging of complaints, especially those that are minor or vexatious
 - use of transparent performance indicators relating to timeliness in the management of complaints
 - parity in timeframes so that practitioners are able to have sufficient and equivalent time to respond to regulators' requests
 - the provision of relevant information throughout the life cycle of a complaint, to allow the practitioner to respond and stay informed
 - access to appropriate clinical input and peer review of complaints to provide professional and clinical guidance to inform regulatory decision-making
 - the ability to enter into alternative dispute resolution, where appropriate.

June 2015

Introduction

Avant is Australia's leading medical defence organisation, representing more than 64,000 health practitioners and students. Avant assists doctors in responding to patient complaints throughout Australia.

Doctors can receive complaints about their professional conduct from many sources. As well as receiving complaints from professional regulating bodies, practitioners can receive complaints from other regulators, such as the Department of Human Services about billing practices and from privacy regulators about privacy breaches. Although this paper focusses primarily on complaints to medical regulators about doctors' professional conduct, many of the principles outlined below apply equally to complaints handled by other regulatory authorities.

With changing patient expectations and the increasing recognition of the important interests of the consumer in the regulatory process, there is a risk of the practitioner's voice being lost. It is important to make sure that those being regulated are not forgotten in the process of ensuring patient and consumer expectations are met.

For a regulatory system to be effective it must have the confidence of the profession being regulated. If the profession does not have confidence in the regulator, it will struggle to accept the consequences of regulation. This will encourage an adversarial approach to regulation, leading to increased costs and reduced regulatory efficiency.

Avant believes that an effective regulatory scheme for doctors should be based on the following principles:

- ▶ There should be a transparent process for patients to make complaints or raise concerns.
- ▶ The regulator's powers to protect the public should not be exercised at the expense of the rights of practitioners to a fair process.
- ▶ Allegations should be investigated by a body with sufficient investigatory powers, an understanding of the practice of medicine, and an understanding of the role of a regulator in protecting the public.
- ▶ The process should support the rights of doctors to natural justice and procedural fairness, including:
 - to be given all relevant material under consideration in a timely manner
 - to have decisions made independently and objectively, on the basis of relevant and cogent material
 - to be given a sufficient opportunity to be heard on matters affecting their ability to practise.

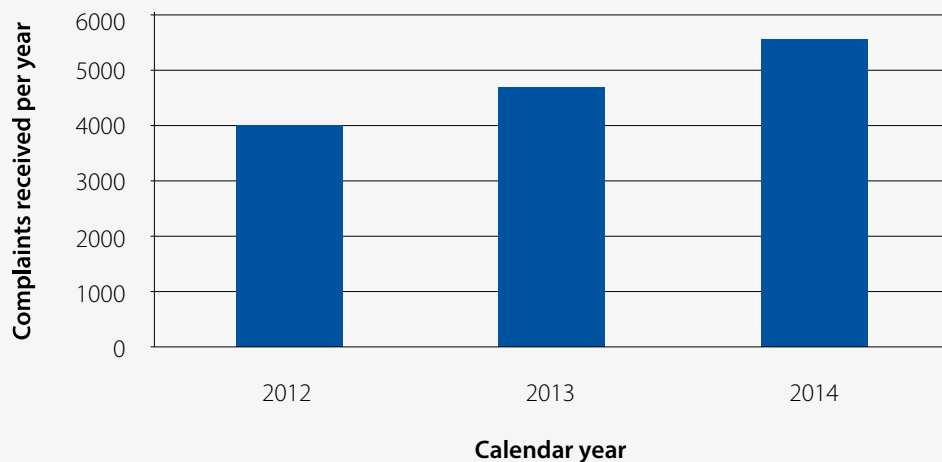
Under the Health Practitioner Regulation National Law (National Law), complaints about the health, performance or conduct of a medical practitioner are called "notifications". In this paper, "complaint" is used to refer to notifications under the National Law as well as complaints to the Health Care Complaints Commission (HCCC) in NSW and the Office of the Health Ombudsman in Queensland.

The data on complaints

The 2013/14 Australian Health Practitioner Regulation Agency (AHPRA) annual report noted there was a 19% increase in complaints for medical practitioners from the previous year. It further reported that:

- ▶ 56% of all complaints received were for doctors, who represent 16% of registered health practitioners
- ▶ 4.9% of medical practitioners were subject to a complaint, which is the highest rate amongst registered health practitioners.

Figure 1: Number of complaints for registered medical practitioners¹ – 2012-2014



How are complaints against doctors handled in Australia?

The Medical Board of Australia (MBA) and AHPRA manage professional conduct complaints for doctors in Australia. However, Queensland and NSW have their own separate and different complaints handling processes for practitioners based in these jurisdictions. In these states health complaints are managed by the NSW HCCC² and the Queensland Office of the Health Ombudsman³ respectively.

When a complaint is received by a complaints handling body it can progress through a number of stages. These include:

- ▶ assessment
- ▶ investigation
- ▶ use of the immediate action power
- ▶ health assessments
- ▶ performance assessments
- ▶ action after the completion of assessments, investigations, health or performance assessments.

There are key features that Avant believes a regulatory complaints system should have to further engender the confidence of medical practitioners and consumers alike. A complaints handling body should:

- ▶ effectively triage complaints especially those that are minor or vexatious
- ▶ adhere to transparent performance indicators relating to timeliness in the management of complaints
- ▶ ensure that practitioners have sufficient and equivalent time to respond to regulators' requests
- ▶ provide relevant information throughout the life cycle of a complaint, to allow the practitioner to respond and stay informed
- ▶ ensure that complaints are handled fairly, objectively and efficiently, and in a transparent manner
- ▶ access appropriate clinical input and peer review of complaints to provide professional and clinical guidance to inform regulatory decision-making
- ▶ enter into alternative dispute resolution, where appropriate.

How can complaint processes be improved?

Avant supports a responsive, risk-based approach to managing complaints. This requires regulators to take the least intrusive course of action that will protect the public from the risk of harm, and only escalate to more formal enforcement when minimally-invasive strategies do not (or will not) work.

Avant further believes that there should be a nationally consistent approach to complaints handling, not only in terms of process but also outcomes. An absence of consistency has led to confusion and delays regarding the role of AHPRA, the MBA and state-based health complaints entities. Avant has further found that management of complaints can at times be characterised by a lack of communication, transparency and an inefficient use of investigative resources.⁴

Avant believes that there should be a statutory requirement that all relevant information concerning a complaint be provided to practitioners. Provision of all relevant information to doctors at an early stage will greatly assist in speeding up the resolution of matters and avoid regulators and practitioners entering into protracted debates about procedural fairness.

Current regulatory processes have the potential to adversely affect the mental, physical and financial health of medical practitioners. Avant believes that there should be greater acknowledgment by regulators of the impact of regulatory processes on doctors' health and wellbeing. For more information, see Avant's position paper 'The impact of claims and complaints on doctors' health and wellbeing': www.avant.org.au/impact-of-complaints

The decision to restrict practice

The state and territory boards have the responsibility of identifying matters where the evidence supports the use of the immediate action power. This power allows regulators to suspend the registration of a practitioner if there is a serious risk to public safety.

Avant considers that use of emergency powers ("immediate action") to restrict a practitioner's ability to practise should be proportionate with the risk to be averted. To ensure this power is used fairly, legislative provisions should be in place to allow a right of review for any decision to restrict a practitioner's practice without the need to lodge an appeal in a tribunal.

In Queensland, the Health Ombudsman can take immediate action and restrict a practitioner's ability to practise without reference of a complaint to a suitably qualified and experienced practitioner.⁵

The Health Ombudsman can use this power without giving a practitioner the right to make a submission about whether the proposed action should be taken, or whether some other action can be taken which provides an appropriate level of protection for the public. In Avant's view, use of immediate action power in this manner diminishes a practitioner's right to natural justice and confidence in the regulatory system.

Avant's position

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 - the ability to enter into alternative dispute resolution, where appropriate.

Key links

Avant's submission to the Review of the National Registration and Accreditation Scheme

<http://www.avant.org.au/news/news-resources/NRAS-submission/>

Avant's submissions to the Queensland Health and Community Services with respect to the Health Ombudsman Bill 2013

<http://www.avant.org.au/workarea/downloadasset.aspx?id=17179869954>

Avant's submissions to the Queensland Minister for Health with respect to the review into the Performance of the QBMBA, MBA and AHPRA

<http://www.avant.org.au/workarea/downloadasset.aspx?id=17179869769>

Avant's submissions to the Victorian Legal and Social Issues Committee Inquiry into the Performance of AHPRA.

<http://www.avant.org.au/workarea/downloadasset.aspx?id=17179869559>

References

1. AHPRA Annual report 2013-14, Australian Health Practitioner Regulation Agency, Melbourne
2. Health Care Complaints Act 1993 (NSW).
3. Health Ombudsman Act 2013 (QLD).
4. Avant's submission to the Review of the National Registration and Accreditation Scheme for Health Practitioners.
5. Health Ombudsman Act 2013 (QLD) s58.

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