C O R R E C T E D V E R S I O N

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

LEGISLATION COMMITTEE

Inquiry into the performance of the Australian Health Practitioner Regulation Agency

Melbourne — 9 August 2013

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Dr M. Moynihan, president, Rural Doctors Association of Victoria.

The CHAIR — Good morning. I welcome Dr Michael Moynihan, president of the Rural Doctors Association of Victoria. Thank you for appearing before us this morning and for your written submission, which has been provided to the committee. All evidence taken at this hearing is protected by parliamentary privilege, as provided by the Constitution Act 1975, and further subject to the provisions of the Legislative Council standing orders. All evidence is being recorded. You will be provided with a proof version of the transcript within the next week. Transcripts will ultimately be made public and posted on the committee's website. I now invite you to proceed with a brief opening statement, if you wish, and then I will ask committee members to ask questions relating to both your evidence that you will provide to us and your written submission. Thank you very much again for being before us this morning.

Dr MOYNIHAN — Thank you. This is the fourth time I have given evidence to a committee here — once in person, once by telephone and once just by submission because I was waylaid by avian flu.

The CHAIR — Thank you again for being before us. You are well familiar with the process.

Dr MOYNIHAN — I have been president of the Rural Doctors Association of Victoria since 2004. I have worked closely with the coalition since then, and I feel that we have achieved something with the rural generalist training program, which eventuated last year and is now gaining strength. I do have some credentials with respect to the matters of my submission because from 1993 to 1996 I was on the national joint consultative committee for paediatrics, which was a six-man committee which, after deliberation and looking at the public interest, decided to recommend very strongly that paediatrics be an integral part — acute hospital paediatrics should be a mandatory part — of GP training. That was accepted by the Royal Australian College of General Practitioners and remains in place now for those doctors training through the general practice training program, what we call general practice education and training or GPET.

I have a particular interest in vocational practice. I am concerned that there has been a departure from vocational practice in the actions of AHPRA. It was a slow learning process, but this is what we came to conclusion had occurred over the last few years. Vocational practice had been very strictly controlled through all sorts of measures, particularly through the supervision of trainees in general practice, which required accreditation of both teachers and practices by both the RACGP and the Australian College of Rural and Remote Medicine, which have specific standards for supervision. Also for some time it had been quite difficult to get overseas doctors into general practice. They had to go through a lot of hoops, and very often practices were given very strict conditions of supervision before they were allowed to take these doctors.

All this changed under AHPRA. I refer to AHPRA through the Medical Board of Australia and its subsidiary state medical boards, which are still the province of the state, being appointed by the minister. The state, I feel, has a major interest in these matters because it has 104 health services which depend on quality trained GPs and also it has population health aspirations, which were published in November 2011 as the metropolitan, regional and rural health plans. So I believe it has a stake in these issues, and that is why I proceeded to make the submission.

In 2010 we became very concerned by a number of reports that standards in corporate practices using overseas trained doctors were not high and that there was a plethora of anecdotal accounts indicating that doctors were seeing poorly managed cases both in casualty and in other practices. We received and deliberated upon these reports for some time and through a number of meetings and eventually, in January 2011, we wrote to the medical board positing a number of questions about the supervision of GPs. At the time we were unable to believe that there had been a slip in standards of supervision. I should say that it is not enough for a doctor to acquire a fellowship in general practice; they have to be properly and vocationally trained in order to gain the competencies which carry forth once they are general practitioners. The overseas doctors are on what is called an exemption from the requirement to have a fellowship to practice independently in general practice.

In 2011 we received a reply from the Medical Board of Australia indicating that they were satisfied with the situation and that they would be shortly publishing standards. They published those standards in June, and we were quite surprised to find that the standards stated that one doctor would be allowed to supervise four or more — not stated — aspirants, people with a limited registration, just the first part of their Australian Medical Council examination, and that these could be, upon due vetting, telephone supervised. We considered replying to that, but the standards had been published. When we looked at whether there had been a consultation process prior to the establishment of the standards, we found there had been no consultation with the preparation. There

are mechanisms for AHPRA to consult with the profession. There are what we call consultations, whereby a position is posted on the website, submissions are received and then a determination is made. That did not occur for these standards.

I was particularly concerned because the numbers seemed very large to me, and I contacted Professor Robert Birrell, who is a professor at Monash and has a long-term interest in these matters, and he said he would look into it. He got back to me to say that the numbers were very large indeed — in fact there were just over 2700 doctors in this situation — and in due course, several months later, he published a paper.

When this paper was published the *Age* put out a report, and I noticed that the owner of the largest corporate was quoted in the report as saying that he had a fully accredited training program. This surprised us because we thought that, compared to general practice education and training, an accredited training program is quite substantial and we would be very surprised if AHPRA, who was solely responsible for these doctors, was capable of running such a program, and indeed when Joanna Flynn appeared before the parliamentary inquiry in Canberra — I think this was the upper house — —

The CHAIR — The Senate inquiry?

Dr MOYNIHAN — Yes, the Senate inquiry. Thank you very much. She acknowledged that they were not able to police this supervision. I then decided to investigate matters further, and over three months I was able to gather 75 names from this corporate. I discovered there were about 25 limited registration doctors and only 16 fellows for 75 doctors. Since we had indications that a number of these fellows were not actually supervising, because we had received information to that effect, I felt that there was no way in the world that this standard or any standard of supervision could be effective, and accordingly I sent the Medical Board of Australia a database showing that there were doctors in two states, New South Wales and Victoria, who were being supposedly supervised but that on their own website the owner of this corporate was listed against what transpired to be 23 doctors.

At this point in time I received a reply from AHPRA to say that this was not a national matter even though I had told them that it was in two states — and it is in three now, by the way, as they are in the ACT as well — and that I should give my information to the states. I therefore sent the information to Victoria and I sent it to New South Wales. I did get an acknowledgment from New South Wales but not from Victoria. In fact, I sent it personally to the chairman of the Victorian board at his practice address but did not get a reply.

At the same time Dr Peter Radford, who has submitted to this inquiry, wrote to the medical board expressing his extreme dissatisfaction. He was a member of our committee but quite independently had gone to Mildura to do some casualty work while his daughter was training in medicine so he could give her a little bit of support there, and he was flabbergasted in the extreme about the level of care that was being received by patients that they were seeing in casualty in Mildura. So he wrote to the medical board and he submitted to you, and as with all these other instances I do have copies of correspondence where the committee has requested it, including his correspondence with the medical board. He went to see the medical board and he felt that he did not get a good hearing.

The CHAIR — Is Dr Radford prepared for the committee to have that correspondence?

Dr MOYNIHAN — Dr Radford would be prepared to submit. He is quite happy. I have contacted him this week. I have emails.

The CHAIR — Thank you, that would be helpful.

Dr MOYNIHAN — That is why I am quoting him by name. I might say that, of all the other people who have complained to us, they all have been most reluctant to put themselves forward in correspondence. I think they are worried whether it could impact on their later career in some manner.

The CHAIR — Certainly. Dr Moynihan, I am keen to go to questions from the committee.

Dr MOYNIHAN — Yes, all right. I just want to mention one more matter, very briefly. We are in receipt of some information about this particular corporate owner which concerned his immigration to Australia and his change in name. We got a DIAC investigation which confirmed that he had not been fully honest in his paper in

Cairo. They confirmed this through their embassy in Cairo. It is an ongoing matter because of his family situation, and I felt it necessary to inform the medical board of this. I have informed them, and despite a number of comings and goings since, and assurances in September 2012 and January 2013 that the matter was being actively dealt with — I am in receipt of an email saying that the investigation had been concluded and would be promptly dealt with and I would receive a notification of the outcome — nothing has happened, and that is now about 20 months ago, I think.

The CHAIR — Thank you for providing the evidence that you have this morning. I would like to ask you about one of the areas that you recommend, and you say in your submission that it is suggested that the state needs to maintain some avenues of control and moderation with respect to AHPRA and the MBA. Could you then share with the committee what form of independent feedback the minister requires? You have highlighted in your evidence this morning some of those areas that will effectively impact on the health services of this state, of which he is responsible, so I am just wondering if you could share with the committee what you believe that feedback should be with the minister or how that should occur.

Dr MOYNIHAN — The minister, I believe, needs to have contact with the medical board of Victoria, which is his responsibility. If he agrees with the material that I have already provided to him then I feel he could — and I would never expect him to tell me what he is doing, but I would hope that he would — address this matter to the medical board of Victoria.

The CHAIR — Could I interrupt? Not in a specific case, but in terms of generally, do you believe the minister should be aware of what is going on from the various boards rather than from a national perspective, where perhaps he will not be aware because of the way that AHPRA is structured? Would you comment on that?

Dr MOYNIHAN — The state has a direct interest in workforce. The state has to somehow influence the process whereby workforce is engendered. At the moment there is a very large component of workforce from overseas. It is approximately 50 per cent of all general practice workforce. A lot of this is non-vocational. Some of it is more vocational because a lot of these doctors are being trained in vocational practices, but a lot are being trained in corporates. So there are maybe 25 per cent of all GPs not trained as vocational doctors. This has serious implications for the production of population health. These doctors are all coming through into metropolitan now. They will all leave rural, and more are coming in through the same route.

The CHAIR — I understand that, but in terms of registration from a national perspective, and under the former system where the boards had responsibility and direct contact with the minister, and now AHPRA has taken over a lot of that role, is what you are saying that there is a gap there?

Dr MOYNIHAN — Yes. The minister has access through the council of health ministers. One cardinal question that has arisen of course is whether AHPRA has independently pursued its public duty in protecting the public or whether it has acquiesced to a system of reduced standards in the matter of inculcation of overseas doctors. There is nothing to indicate that this has occurred, but the supervising body is the council of health ministers. Whether it is supervisory or advisory to AHPRA is unclear from the legislation, looking at it myself, but it seems to me that you cannot avoid, if you wish to have population health, the matter of medical standards, and therefore there has to be political input. It is possibly achievable already through the council of health ministers or at least it is possible through board shake-ups.

The CHAIR — You are saying it is possible but you are not sure?

Dr MOYNIHAN — I am not privy to the way the council of health ministers works, and I know it is terribly difficult to get an item of business through the council of health ministers. I am dealing with a number of other matters with the minister, and I am aware that it is a difficult matter to get through, but nonetheless in a matter of this importance it has to be pointed out that we have a further problem here — that is, with the huge extra numbers of doctors being trained for general practice, it is essential that this program be wound down, and the medical board has got to see that. I think the board went into this without really thinking about what the implications or consequences were, and they will have to at least in some way be persuaded that this is not a particularly good thing, that supervision standards are going to have to be tightened if you want a well-trained GP workforce.

The CHAIR — Thank you.

Mr ELSBURY — In relation to the supervision of overseas doctors, what would your expectation be of a normal supervision of an overseas trained doctor?

Dr MOYNIHAN — Yes, I can speak to that because I have been involved in this for a very long time, in training overseas doctors both in our casualty department at Swan Hill, where we have trained about 100, and in our own practice, where we have trained about 12. If a doctor is in your practice learning general practice, you make yourself available every day, all day. They can contact you and knock on your door. I am not the only person who does this. I can think of 60 supervisors — I attend conferences with them and I know them all personally — in the state, in our part of the state, who make themselves available in this way. That means that every time they have a query about patient management, they can knock on your door and get help. You can pop in and see the patient and sort things out, and then they have an immediate learning experience which they never forget. That is what I and all my colleagues in vocational training believed to be the norm of training.

Mr ELSBURY — And having four under your wing, basically, would be in your opinion extravagant?

Dr MOYNIHAN — Especially by telephone. It just does not happen; I am sorry. It is a paper exercise. It is not happening. I have enough evidence at least of this, anecdotal evidence, that it is not happening. A ratio of 1 to 2 — I would not like to take on 1 to 4, I can tell you. But to some extent my responsibilities do extend to the doctors in casualty, to the medical students we have, to our registrars in training and also to our overseas doctors, but we work it out that we have enough fellows in the practice so that the actual ratio overall is 1 to 2, and there is always someone there to provide this sort of training.

Mr ELSBURY — How would you rate an overseas trained doctor compared to a locally trained, fresh-out-of-university doctor?

Dr MOYNIHAN — I have got to honest about this, because we are seeing first-year medical students, second-year medical students and fourth-year medical students. We have fourth-year medical students with us all the time. When overseas doctors arrive, most of them are no better than fourth-year medical students, sometimes not as good as. You have moved from your country and your language is a problem — it takes time to settle down. In casualty we have a system that everyone is watching them and helping them. The nurses play a part in this. They are given good teaching, and I might say that things improved dramatically in about 2002, when we formalised our teaching processes. They had all been failing their Australian Medical Council exam until then. They all came on a lot better. I had a 2-hour teaching session on Monday nights. It made a big difference.

You have a variety. You have some very good doctors, and you also have some very poor doctors. You have doctors where you have to say, 'I'm very sorry, mate, we can't employ you. Go and find something else'. Then sometimes they pop up in corporates. But we cannot take them on in our own practice. When we accept people in Swan Hill, we might get a hundred applicants for a few jobs. There are thousands of overseas doctors without jobs, you know — thousands.

Mr O'BRIEN — Thank you, Dr Moynihan, for your submission and evidence. You have given an invitation to the committee where you say you can provide full documentation in light of the serious concerns you are raising. Through the Chair, if I can ask you to provide that, that would be of much assistance.

Dr MOYNIHAN — Yes, all here.

The CHAIR — Thank you. You have it with you?

Dr MOYNIHAN — Yes.

Mr O'BRIEN — Thank you very much. And the other examples you have raised, of correspondence, that are relevant?

Dr MOYNIHAN — Yes.

Mr O'BRIEN — With appropriate consents, if necessary. The next matter I would like to ask you about specifically is on the key issue of the ratios of 1 to 2, which you say applies to Australian trained doctors, GP training, and of 1 to 4, which you say is in place as a result of the standard.

Dr MOYNIHAN — 1 to 4 or more.

Mr O'BRIEN — Or more, yes, in actual practice. Have you been given a reason as to why the ratio would be different for locally trained doctors to that of overseas trained doctors?

Dr MOYNIHAN — No. Regrettably I did not get a reply, any kind of reply, or invitation to discuss these matters with the medical board.

Mr O'BRIEN — Can you hypothecate as to what a reason might be?

Dr MOYNIHAN — I think these standards were set to ratify a situation which was already in existence and which had grown up by default. That is my belief. When it was realised that the situation was being monitored, they decided to ratify the situation as it was. I think, because they had received what was basically a complaint from us, they decided to proceed without consultation.

Mr O'BRIEN — Because your concern with the medical students coming through is that it is also effectively going to be a potential barrier to entry for the locally trained doctors?

Dr MOYNIHAN — It is potentially a barrier, yes.

Mr O'BRIEN — That is of some concern. But obviously the most immediate concern for this inquiry is the protection of the public, and you are concerned there. Again, in a nutshell, what would your evidence be as to the appropriate ratios for Australian and locally trained doctors? What should be the appropriate ratio?

Dr MOYNIHAN — I am actually in the process of making a workforce study, and I have reached some conclusions about this. The ratio of overseas doctors to Australian was for a very long time, until about 1999, 23 to 24 per cent. It has now risen to 38 per cent.

Mr O'BRIEN — Sorry, that was not my question. The fellowship, the training, the supervision ratio that you have referred to?

Dr MOYNIHAN — Regarding the supervision ratio, we had extensive consultation with our members about this and we felt that the 1 to 2 supervision ratio should be applied to all doctors. We had a vote at our AGM about it, and we published our position on our website.

Mr O'BRIEN — And if there was one group that had a greater ratio or greater numbers of trainees or underqualified doctors, compared to those supervising them, on the evidence should that ratio be in favour of the locally trained doctors, by reason of their training, or the overseas trained doctors?

Dr MOYNIHAN — It should be in favour of the overseas, because they need more supervision, but I would greatly regret it if the ratio was reduced for locally trained doctors.

Mr O'BRIEN — So the 1 to 2 is right?

Dr MOYNIHAN — The 1 to 2 is sacrosanct, as far as I am concerned. Everyone I talk to believes this.

Mr O'BRIEN — And you think the overseas ratio should come up to that?

Dr MOYNIHAN — It should come up to that, and I think they should — —

Mr O'BRIEN — Thank you. The next question I would like to take you to will be the final matter — your recommendations. They are quite strong in relation to where you see the state having an important role. In the second paragraph:

> … the state needs to maintain some avenue of control … with respect to the AHPRA (MBA).

Could you elaborate on those key recommendations, please?

The CHAIR — That one is probably similar to what I asked in relation to that direct contact with the minister. Would you like to comment on the other recommendations?

Mr O'BRIEN — There is also the flow of doctors across state borders et cetera?

Dr MOYNIHAN — I do believe the states have to take an interest in this. There has to be some kind of mechanism control, and the only way the state has got is to exercise that control through the replacement of board members of the state boards. We thought when we started out here that the states had lost control completely. It was only when the matter was referred back to the states that we realised that the states did have a role to play in this. I do happen to know that the New South Wales medical board has set its standards somewhat higher and that it will not allow limited registration doctors to be telephone supervised; it will only allow full registration doctors to be telephone supervised in rural. That may or may not have had something to do with the information that we provided to them. But this state medical board has decided to persist with the looser arrangements. The state, I believe, must be allowed to exercise more control and it must not be allowed to lose control.

The CHAIR — Before I go to Mr O'Brien's final question, can I take it from that that you would be concerned if the state boards — whether it was a medical board or any other practitioner board that currently comes under AHPRA — were removed and it went to a national basis?

Dr MOYNIHAN — I would be very concerned, yes.

Mr O'BRIEN — Just one matter: the third page of your submission. It is on the issue of the overseas versus the Australian GP training. You say:

> It appears that the AHPRA (MBA) … has firmly committed … to a substantial program of overseas doctor importation to general practice set at a standard significantly below that of Australian GP training.

What is your evidence for that submission?

Dr MOYNIHAN — It has been very reluctant to engage with us on the matter of supervision. With respect to the situation of overseas trained doctors, overseas trained doctors are not obliged to advertise their status. All Australian trained doctors in general practice training are obliged to state their training status; overseas doctors are not obliged. We made representations to the medical board that they were being advertised as providing equal levels of service — actually, levels of service at or above that of the training providers and that of the RACGP — and we pointed out that this was advertised on the website. We received a reply that any doctor registered with the medical board is entitled to make such claims. That appeared to me to be a forthright declaration, and I have this in writing too, that the medical board believed that this was a new standard of general practice.

Mr O'BRIEN — If you could provide that, it would be great.

Ms HARTLAND — As usual, that was a really good submission. Thank you, Doctor. Can you outline what kind of interchange you have had with AHPRA, because your organisation is well regarded. You represent rural doctors, and you have done an extraordinary amount of study over the years. What interchange have you had, or discussions with AHPRA, about these issues?

Dr MOYNIHAN — There were no discussions about the supervision aspect except in correspondence, and I felt that with respect to that they were not interested in dialogue with us. With respect to the status of this corporate owner, I have been pushy. I made a number of telephone calls, I talked to various people and I said, 'This matter has to be dealt with'. I received a call from a lawyer inviting me to withdraw my views, which I considered to be slightly forceful. I then continued to pursue the matter and did receive further correspondence from them but, as I say, nothing has eventuated.

Ms HARTLAND — Sorry, can I take this one step back? You had contact with AHPRA, and you made comments about a corporate identity. Then you received telephone calls or correspondence from a lawyer. How did the lawyers — —

Dr MOYNIHAN — She was a lawyer working with AHPRA.

Ms HARTLAND — And asking you to withdraw your — —

Dr MOYNIHAN — Asking me to withdraw.

Ms HARTLAND — On what basis?

Dr MOYNIHAN — On the basis that one should not make unpleasant accusations against a fellow doctor.

Ms HARTLAND — Could we also when we speak to AHPRA — if you could supply information about this — —

Dr MOYNIHAN — The lawyer's name is Fiona Sinnamon.

The CHAIR — That is the lawyer with AHPRA? Is that right?

Dr MOYNIHAN — Yes, and she was placed as an investigative officer for the — —

The CHAIR — Thank you very much.

Ms HARTLAND — If you could possibly give us some more information about that, I think this is another one we need to take up with them. I think that is supposed to be the role — —

The CHAIR — If you are happy to provide that to the secretariat, that would be most helpful, Dr Moynihan.

Dr MOYNIHAN — Yes.

The CHAIR — Thank you very much. I do not believe there are any further questions. On behalf of the committee I thank you very much for your time this morning and for the evidence you have provided; it has been most helpful.

Dr MOYNIHAN — Thank you.

Witness withdrew.