Response to questions on notice: Victorian Board of the Medical Board of Australia

9 December 2013

In relation to Dr Arthur Obi and Stawell Regional Health (see submission nos. 44 & 45) - reasons why chaperone conditions are still in place on Dr Obi despite having been found not guilty of any wrong doing in a court of law.

Response

The Victorian Board of the Medical Board of Australia (VBMBA) removes conditions on registration when it believes they are no longer necessary to keep the public safe. They can be removed if the practitioner requests this and the VBMBA decides it is safe to do so; or when the time-frame for reviewing the conditions is reached; or when the VBMBA determines they are no longer required.

Relevant context

In Victoria, trials relating to serious sexual offences are effectively held in a closed court and the complainant's evidence is heard 'in camera'. Therefore, many details about allegations are not publicly available and there may be highly relevant information available only to Victoria Police, the VBMBA and AHPRA.

The standard of proof in criminal matters is higher than for matters relating to allegations about an individual practitioner's professional conduct. The purpose of a criminal prosecution – which is ultimately punitive – is also different to a regulatory body's function in managing risk to protect the public. For these reasons, the VBMBA may decide to pursue allegations about an individual practitioner's professional conduct even though the criminal prosecution arising from the same conduct was unsuccessful.

The VBMBA's statutory function requires it to manage risks to public safety. The VBMBA imposes conditions on a practitioner's registration when it determines this is necessary to protect the public. The VBMBA has the power to take immediate action to restrict a practitioner's practice, as an interim step while allegations are investigated fully.

The VBMBA routinely monitors the need for conditions on registration, practitioners' compliance with conditions, and their effectiveness in protecting the public. The VBMBA will continue to monitor the need for conditions on Dr Obi's registration and will vary or remove them when it is satisfied that they no longer serve the public interest.

And further, reasons for the delay in AHPRA's notification to Stawell Regional Health about these conditions.

Response

An administrative error meant that there was a delay in advising the health service about the conditions imposed on Dr Obi's registration.

New processes are now in place to prevent a recurrence.

Relevant context

In April 2011, the VBMBA and AHPRA apologised to Stawell Regional Health for the delay in advising the health service about the conditions imposed on Dr Obi's registration. The matter was discussed directly with the CEO of the Health Service, and subsequently members of the VBMBA and AHPRA met with representatives of the Stawell Regional Health Board.

The conditions on Dr Obi's registration and section 120 of the National Law required Dr Obi to advise his employer/s of the conditions on his registration and to confirm with AHPRA, through a statutory declaration each month, that he had done so.

In January 2012 the local Stawell newspaper reported under the banner headline *"Doctor ban due to contract obligation"* that Dr Obi had not told his employer of the conditions on his registration (see attached scan).

The VBMBA has no role in, and is not privy to the terms of, a practitioner's private contractual relationship with his or her employer. Subject to the existing conditions on his registration, Dr Obi remains eligible to practise and be employed by any health service in Victoria (or Australia).

In relation to Professor Paddy Dewan (see submission no. 55 and public hearing evidence on 21/8) - what is the process in reviewing the audits undertaken by Professor Dewan and feedback to Professor Dewan on these audits?

Response

Under the audit and review process, each of Professor Dewan's employers is required to provide the auditor (who is independent of the VBMBA and AHPRA) with a de-identified list of patient cases undertaken during the audit period by Professor Dewan. The auditor randomly selects a number of cases for review and advises each employer of those selected. Each employer must then collate and copy all the relevant information (including patient records) for each case selected by the auditor; de-identify (redact) them to protect the privacy of the patient, and then provide the de-identified information to the auditor. The auditor then reviews the information and provides a report to the VBMBA.

AHPRA has a record of 16 interactions with Professor Dewan specifically in relation to the audit requirements during 2013. Details about the audit requirements and the process for the VBMBA's review of the auditor's report have been provided to him.

Relevant context

On 10 December 2012, VCAT made an order in relation to Professor Dewan (see attached). On 17 January 2013, AHPRA on behalf of the VBMBA wrote to Professor Dewan confirming what would be involved in implementing the orders of the tribunal. The matter heard by VCAT was the final stage in a process that started with a case initially prosecuted by the Medical Practitioners Board of Victoria and subsequently appealed twice by Professor Dewan to VCAT and once to the Supreme Court.

The conditions imposed on Professor Dewan by VCAT required the appointment of both an auditor and a counsellor. They also required an audit of randomly selected cases at six monthly intervals. The first audit was to cover cases Professor Dewan had undertaken between February and August 2013. The first audit began at the end of the first six-month audit period, in August 2013. Under the VCAT orders, there will be a further three audits, each to be undertaken at the end of a six-month period.

The audit process is manual, complex and time consuming for the employers.

On behalf of the VBMBA, AHPRA has so far received three of the four audit reports from the first audit period. When the auditor has provided all four reports from the first audit period, and the Board has full and complete information on which to base its decisions, AHPRA will submit these to the VBMBA for its consideration.

What are the reasons for the delay in the notification process involving Professor Dewan?

Response

The progress of this investigation is directly related to Professor Dewan's repeated refusal to provide requested information to AHPRA. To date, AHPRA's records show 25 contacts with Professor Dewan during this investigation.

The VBMBA requires full and complete information to enable it to make properly informed decisions.

Relevant context

The VBMBA and AHPRA do not usually confirm that a practitioner is under investigation. The VBMBA and AHPRA must act lawfully, consistent with the National Law and within relevant privacy and confidentiality requirements.

However, in this instance, Professor Dewan has advised the Committee that he is the subject of a current investigation. As such, the VBMBA considers that Professor Dewan has consented to its providing information in response to the specific question raised by the Committee about the delay in the notification process about that matter, to the extent it does not compromise the ongoing investigation.

The VBMBA plays no role in a practitioner's private employment relationship with his or her employer.

The conditions on Professor Dewan's registration do not prevent him from being employed.

Can you provide some feedback on comments made in submission no. 28 from Ms Julie Phillips relating to the health complaints process and 'no further action' decisions?

Response

We have reviewed the submission made by Julie Phillips who is a disability advocate.

As Ms Phillips notes in her submission, she is unable to provide the names or other details of either the notifiers or the practitioners to whom she refers. On this basis, AHPRA has insufficient information to provide the committee with any additional insight into these specific matters.

The notifications (complaints) to which she refers are about registered psychologists, not medical practitioners. The VBMBA is therefore also unable to respond.

Relevant context

In general, National Boards and AHPRA recognise there can be a difference between what a notifier (or their advocate) may expect after making a notification and what the boards and AHPRA as regulators are able to deliver under the National Law.

The focus of the Boards is on patient safety and protecting the public. Action taken by a Board is designed to manage risk to patients as a result of practitioners' unprofessional conduct or professional misconduct. Sometimes, issues raised do not meet the 'risk threshold' that warrants action by a Board.

A significant proportion (more than 50%) of these do not lead to regulatory action by Boards (see 2012/13 annual report of AHPRA and the National Boards for further detail).

Boards only decide to take no further action after close and considered examination of potential safety risks, and after deciding that in a particular case, no regulatory action is warranted. The rate of 'no further action' is consistent across Australia, including in NSW where there is a different model of complaints management. It is also consistent with like regulators such as the General Medical Council in the UK.

In relation to the evidence from Miss Jennifer Morris (sub no 31 and hearing evidence on 9/8), together with the case studies referred to in the submission from Avant Mutual Group (sub no 38) - can you advise how these cases were dealt with, reasons for the delays, and how such cases may be dealt with in the future with new KPI's pertaining to the notification process?

Jennifer Morris

Response

The National Law does not restrict the Health Services Commissioner from taking action to resolve a complaint it initially received – for example, by conciliating a complaint between the notifier and the practitioner – after the VBMBA has decided that there is no risk to public safety that requires regulatory action.

The HSC believes it does not have the power under its current legislation to do so, however helpful this may be to consumers.

The decision to not deal with such matters after they have been concluded by a Board reflects the HSC's view of its current powers. The Committee may find it useful to discuss with the HSC its position on this issue. The Victorian Government's response to the review of the HSC legislation may also provide some guidance.

Relevant context

AHPRA and the VBMBA are legally prohibited from discussing individual matters and we will not disclose information to the Committee that in any way compromises Ms Morris' privacy.

Ms Morris' concerns were initially lodged with the Health Services Commissioner (HSC) as a complaint. As is required under the National Law, the decision about referral of the complaint to AHPRA (for management) and the VBMBA (for decision-making) was made jointly through the standard joint consideration process.

Ms Morris' concerns, if established, could have amounted to a breach of professional standards and identified a risk to public safety. After considering all of the information obtained in the course of the investigation conducted by AHPRA, the VBMBA decided that there was in fact no risk or breach of professional standards that required further action by the VBMBA, and it determined that it was appropriate to take no further regulatory action.

Ms Morris has exercised her right to seek a review by the National Health Practitioner Ombudsman of the process applied by the VBMBA and AHPRA. We will cooperate fully with the Ombudsman to provide any information she requires and will apply any lessons identified by the ombudsman to inform future processes.

We are pleased that Ms Morris, after an open recruitment and competitive selection process, accepted a position on the Community Reference Group (CRG) established for the National Scheme in 2013. AHPRA and the National Boards look forward to working with Ms Morris and the group generally on a range of issues to improve consumer and community engagement in the National Scheme. An early focus of the group is on notifications management. AHPRA's update to the committee also outlines the recent engagement of the Health Issues Centre in Victoria to work with the National Scheme and the Community Reference Group to address consumer concerns including improving transparency in the joint consideration process.

The VBMBA and AHPRA also look forward to the Victorian Government's response to the review of the HSC, as we were actively involved in the review process and believe its recommendations are likely to address many issues raised in this inquiry.

Avant submission

Response

AHPRA accepts that timeliness was an issue in the four cases identified by Avant. Since these matters were dealt with, operational processes have been strengthened, additional resources invested in notifications management (including seven new investigators and lawyers in the Victorian office) and new KPIs are in place.

These five cases are not representative of current standards of notifications management in the Victorian AHPRA office.

AHPRA met with Avant in June 2013 about each identified matter and provided a full briefing to them. Avant has indicated that it is satisfied with the information provided.

VBMBA and AHPRA processes have been designed to identify, stratify and manage risk. One hundred percent of high-risk notifications in Victoria have been identified and acted on immediately. Not one high-risk case in Victoria has been delayed or deferred.

We provide the committee with a summary of any compounding issues in each case identified by Avant.

Dr X

There were a number of compounding factors in this notification, including:

- It was a mandatory notification, based on third hand information. It took time for the Board to get first hand information from the patient
- The patient had mental health issues, which prolonged the time involved in gaining necessary information
- Minor administrative errors and postal delivery issues

Dr A

Timeliness was the primary issue in the management of this notification. However, every investigation must balance timeliness with thoroughness, to enable the VBMBA to make fully informed decisions.

Ms C

Timeliness was the primary issue in the management of this notification. Two compounding factors in this case were:

- the practitioner's ill health and subsequent request to defer the panel hearing for three months and
- managing timeliness of panel decisions, when panel members are health practitioners and community members, often with full time jobs and other commitments and priorities.

Dr D

The central issues in this matter relate to timeliness and the stress for practitioners of being involved in a regulatory process. It is important for Boards to have detailed information on which to base decisions, but sourcing this including from third parties takes time and can increase the stress for both notifiers and practitioners.

Natural justice

The National Law (s149) specifies a 60-day time period within which a matter must undergo preliminary assessment.

Avant raised a concern that requiring a practitioner to provide a response within 21-28 days to enable the 60-day limit to be met was not reasonable, as practitioners may not have access to the relevant clinical records necessary to provide a comprehensive response at this stage.

In fact, practitioners are not obliged to provide a detailed response to the notification at this stage of the notifications process. If the VBMBA decides to refer a matter for investigation, AHPRA identifies a timeframe within which the practitioner should provide a detailed response, to support the timely management of the notification.

If the practitioner is unable to access the records during the investigation, the investigator assists the practitioner to view or access the relevant records.

After a briefing, Avant was satisfied that this specific concern did not apply to the assessment phase of the notification management.

Can you provide a response to the questions asked by Mr O'Brien concerning supervision ratios for Limited Registered Overseas Trained Doctors as compared to ratios for locally trained doctors?

Response

The VBMBA tailors supervision requirements to specific international medical graduates, roles and practices, based on Medical Board of Australia (MBA) supervision guidelines.

Supervision of international medical graduates (IMGs) is not the same or designed for the same purpose as supervision of local registrars. The two are not directly comparable.

Relevant context

Direct comparisons of supervision ratios between international medical graduates (IMGs) and local graduates should be made cautiously. IMGs and registrars are not trainees in the same sense and the purpose of supervision of each group is not directly comparable.

Registrar training is not restricted to local graduates. Registrars in training programs are trainees who are supervised to advance their general practice skills and to obtain college fellowship, which is a higher level specialist qualification.

IMGs on limited registration are expected and required to advance towards general registration. They have limited registration and are supervised to ensure safe practice.

IMGs play an important role in Australia's health workforce. In particular, they often provide medical care in areas of workforce shortage, where they are granted limited registration to work in a specific role, with a specific level of supervision. Every time the VBMBA grants limited registration to an IMG, it assesses their specific skills, qualifications and experiences to make sure it matches the particular and specific role they have applied for and that necessary supervision for each individual is in place.

IMGs in general practice Area of Need positions (AON)

- Eligible for limited registration to work under supervision at approved sites
- If all MBA standards are met and eligibility is established, the final 'test' is whether the IMG can obtain a provider number under Commonwealth Area of Workforce Shortage rules and endorsement of area of need status by the state Department of Health.
- An Area Of Need IMG must have a principal supervisor approved by the Board
- Co-supervisors can be nominated, but the principal supervisor has overall responsibility for the IMG's supervision and performance
- The level of supervision (1 – 4 with 1 being a greater level of supervision) is determined based on qualifications, experience in general practice and whether the individual has been in a health system that is comparable to Australia's. It takes into account the number of years of overall medical practice, the location of the practice where the practitioner proposes to work and its accessibility to other resources such as a local hospital

- Only level 1 supervision requires that the supervisor (principal supervisor or co-supervisor) is on site when the IMG is practising. Level 2 requires regular contact between the supervisor and IMG and availability by phone at all times. Levels 3 and 4 progressively increase the IMG's direct responsibility for patient care
- There is no formal limit on the number of IMGs who can be supervised by one supervisor and models do exist where a principal supervisor might be supervising a number of IMGs but the direct supervision is provided by an on-site co-supervisor

Commonwealth funded general practice training program (GPET)

- Australian graduates or IMGs who gain general registration are eligible to apply for the GPET training program. The program is intended to provide training and to improve 'readiness' for independent practice as a general practitioner. There is also an expectation of progression towards fellowship with RACGP or ACRRM which would qualify the practitioner for specialist registration, which is a higher level than general registration.
- The program is administered by Regional Training providers (RTPs)
- The Commonwealth funding includes paid supervisor positions
- It is widely understood across the RTPs that one supervisor will supervise 2 full time Registrars (which can be varied to 3-4 part time Registrars)