



MEDICAL
PRACTITIONERS
BOARD

of Victoria

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Law Reform Committee

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Your Ref:

30 June 2008

Private & Confidential

Mr Johan Scheffer MLC
Chair
Law Reform Committee
Parliament of Victoria
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Scheffer

Re: Inquiry into Vexatious Litigants

I refer to your letter to Dr Joanna M Flynn, President, Medical Practitioners Board of Victoria dated 24 April 2008, inviting the Board to make a submission to the Law Reform Committee's Inquiry into Vexatious Litigants.

You acknowledge that the Committee's terms of reference are confined to vexatious litigants in courts and tribunals but as the Committee understands that the Board also encounters people who might be described as difficult or persistent complainants, you invite the Board to inform the Committee of any policies or practices that the Board has adopted for responding to such complainants. Further, you advise that the Committee is also interested in the Board's views on the extent to which vexatious litigants in the courts and tribunals are also interacting with organisations such as the Board.

I note the terms of reference for the Committee's inquiry and the law relating to 'vexatious litigants' in Victoria.

The Board can identify two categories of difficult or persistent complainants:-

1. The complainant who appears to have a vendetta against a particular doctor and lodges numerous complaints (all of which on the face of it must be accepted because they raise issues of unprofessional conduct) about him/her and encourages other people to lodge complaints about the doctor. This can persist over years and can have a profound effect on the doctor and Board staff.
2. The complainant who lodges only one legitimate complaint but cannot accept the outcome of the investigation or the hearing when it does not favour them or they

do not feel vindicated. The Board has experienced ongoing questioning of its processes and ongoing requests for re-opening of matters based on claims that the person has new information that have spanned a number of years.

Complaints lodged under the *Medical Practice Act 1994* ('the MPA') have no avenues for review of any Board decision. The complainant could apply to the Ombudsman for review of the Board's process but not the outcome. Such cases can have a profound effect on Board staff but the doctor is largely unaffected by it because s/he may not even be aware of the ongoing dispute with the Board about the outcome. The level of scrutiny applied by the complainant can at times be overwhelming because they put every aspect of the Board's dealings with them, both verbal and written, under the microscope. There is a degree of obsession with the Board and its processes that is difficult to fathom because it is unclear what would appease the person other than the Board changing its original decision to one that favoured the complainant.

With the enactment of the *Health Professions Registration Act 2005* ('the HPRA'), the complainant now has the right to request review of a Board decision to take no further action in respect of their complaint. This allows an aggrieved complainant an opportunity to have the Board's decision scrutinised by an independent body – an Investigation Review Panel.

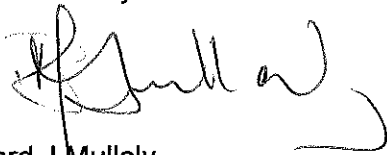
Importantly under the HPRA the Board now has the capacity to determine that a matter does not warrant investigation.

While the Board has not developed any formal policies or practices for responding to difficult or persistent complainants, staff of the Professional Conduct Department and the Legal Department have attended some talks given by professionals with expertise in dealing with unusually persistent or unreasonable complainants and have found their strategies for dealing with such people helpful.

I am unable to comment on the extent to which vexatious litigants in the courts and tribunals are also interacting with organisations such as the Board. However, I am advised by staff of the Board that they are aware that persistent complainants to the Board are often interacting with other organisations that have the capacity to receive complaints.

I trust these comments are useful. If you have any queries, please contact my Personal Assistant, Ms Anne Jobson, on 96550508.

Yours sincerely



Richard J Mullaly
Chief Executive Officer

cc: Ms Janet Atkinson
Ms Kath Kelsey
Dr Robert G Adler