

N.S.W. MEDICAL BOARD



A Guide to Reviewing and Consulting on Complaints



CONTENTS

- 1. An Overview of the Complaint Handling Process**
 - 2. Role of the Reviewer**
 - 3. Administrative Arrangements**
 - 4. Disagreement with Assessed Action**
 - 5. Categories of Complaints**
 - 6. Quick Reference to HCCC Actions**
-

A BRIEF OVERVIEW OF THE COMPLAINT HANDLING PROCESS

At the Health Care Complaints Commission, the Commissioner, Deputy Commissioner and Manager, Operations meet twice a week as the Assessment Committee to consider the appropriate action for dealing with complaints received by the HCCC. Following this, the Commission must consult with the relevant registration body on the proposed action. Each week a batch of complaints is forwarded to the Medical Board requesting that the Board review the complaints to see if agreement can be reached on the course of action to be taken.

Under the Health Care Complaints Act the Commission must assess a complaint within 60 days of it being lodged. In this 60 day period the HCCC will notify the doctor that a complaint has been lodged, consult with the Medical Board and then advise what action is to be taken in regard to the complaint. Accordingly, the Commission seeks the Board's assistance in completing the consultation process as soon as possible to facilitate an early resolution of the matter.

On receiving the complaints at the Medical Board after assessment by the HCCC the secretariat will enter the relevant information onto the database. The batch of complaints is then forwarded to the reviewer by courier for the purpose of consultation. Once the nominated reviewer has advised his agreement or disagreement to the proposed action, a report is faxed to the HCCC notifying of the reviewer's decision. **At this time consultation as required under the HCC Act is deemed to have taken place.** In circumstances where the reviewer has disagreed with the HCCC's proposed action, the matter will be held pending discussion at the next Conduct Committee. Where agreement on a course of action has been reached, the Commission will notify the parties and if appropriate, commence an investigation into the complaint. At the completion of an investigation the Commission will again consult with the Medical Board on whether the matter should be referred to a disciplinary hearing or dealt with in some other manner. Complainants are advised that they may request a review by the Commission's Independent Complaint Review Committee if they are unhappy with the way a complaint has been handled.

In circumstances where the reviewer has disagreed with the HCCC's proposed action, the matter will be held pending discussion at the next Conduct Committee.

ROLE OF THE MEDICAL BOARD'S NOMINATED REVIEWER

Each month a medical member of the Conduct Committee is asked to review the complaints on a weekly basis to determine whether the Medical Board agrees or disagrees with the proposed action. The primary responsibilities of the reviewer are to;

1. exercise clinical judgement in deciding which courses of action for resolving the complaint are the most appropriate given the circumstances
2. be informed on the avenues available for dealing with a complaint and the criteria that should be applied in each case
3. review the complaints in a timely manner
4. detail reasons for disagreeing with a proposed action in preparation for discussion at the next Conduct Committee Meeting
5. Seek the assistance of the Commission or Secretariat where the details of a complaint are unclear

It is important that the reviewer be aware that he or she has the delegated authority to consult on complaints and acts as the Medical Board in that capacity. A complaint will be actioned by the Commission immediately on receipt of the reviewer's report unless there is disagreement.

DISAGREEMENT BY THE REVIEWER WITH THE PROPOSED ACTION

Where the nominated reviewer is not satisfied that the appropriate action has been proposed by the Commission, then he or she is asked to nominate the preferred action and provide a brief reason as to why they disagreed. This will then be forwarded to the Commission, however no action can be taken on the matter until it is discussed at the Conduct Committee. A copy of the complaint and coversheet will be included on the Agenda for the next Conduct Committee at which time discussion on the appropriate action will take place in the presence of the Commission. **Consultation has not occurred until agreement is reached.** It should be noted however that if either the Commission or the Medical Board is of the opinion that a complaint is to be investigated, then it must be investigated. This also applies to complaints referred for conciliation.

ADMINISTRATIVE ARRANGEMENTS

1. Attached at the end of every Conduct Committee Agenda is a roster of nominated reviewers for each month. It would be appreciated if reviewers could advise of any months that they are unable to review the complaints so that an alternate reviewer can be nominated.
 2. It is anticipated that a batch of complaints will be forwarded to the nominated reviewer on each Tuesday. To ensure confidentiality complaints will be forwarded to the reviewer at the nominated address.
 3. The covering letter sent with each batch of complaints will nominate a date by which a response is required. It would be appreciated if reviewers could fax the forms indicating agreement or disagreement back to the Medical Board as close as possible to the nominated date.
 4. The Manager, Operations at the Health Care Complaints Commission may be contacted on telephone 9219 7593 if there are any problems with the quality of the photocopying or if the complaint is illegible. Unfortunately the Commission is unable to transcribe material prior to forwarding it to the Board.
-

CATEGORIES OF PROPOSED ACTION

The following courses of action for dealing with a complaint have been established under the Health Care Complaints Act. In accordance with the Act, the Commission has assigned certain criteria which it applies in assessing the appropriate course of action for dealing with a complaint. The criteria are however very broad in some instances and the "one-off" nature of most complaints suggests the criteria should be used as a guide for deciding on the appropriate action for handling a complaint.

Category 2 - Discontinue Dealing With

The Health Care Complaints Commission has assessed the complaint as one which requires no further action for one or more of the following reasons;

- i. A complaint is frivolous, vexatious or not made in good faith
- ii. The subject matter of the complaint is trivial and does not warrant conciliation or investigation
- iii. The subject matter of the complaint has been or is under investigation by some other competent body or has been or is the subject of legal proceedings
- iv. The complaint raises issues which require investigation by another person or body
- v. There is, or was, in relation to the matter complained of, a satisfactory alternative means of dealing with the matter by the complainant and the complainant does not have a sufficient reason for having delayed the making of the complaint
- vi. The complaint relates to a matter which occurred more than 5 years previously and the complainant does not have a sufficient reason for having delayed the making of the complaint
- vii. The complainant has failed, without sufficient reason, to provide further particulars of the complaint within the time specified by the Commission.
- viii. The complaint concerns a matter that falls within the responsibility of the Commonwealth.

Other categories of complaint which are not dealt with by the Commission are:

- the Commission has no jurisdiction in the matter
 - there is no identifying information in the letter of the complaint
 - the matter is in relation to costs, compensation, or non-clinical aspects of medico-legal reports.
-

Category 4 - Refer to another Person or Body

The Health Care Complaints Commission may refer a complaint if it appears that the complaint raises issues which require investigation by another person or body.

In most instances "another person or body" refers to an Area Health Services, District Health Service or a specific Hospital. The Commission is of the view that if the complaint arose from treatment within the Hospital environment, then the appropriate body to investigate and resolve a complaint is the relevant Area Health Service/District/Hospital. Effectively the complaint is closed on referral to another person or body unless a report is requested back from the relevant body. It is important to note that if the issues raised in the complaint would warrant a disciplinary hearing if substantiated then the complaint must be referred for investigation.

Reviewers are asked to nominate the appropriate "Person or Body" to handle the complaint and specify if a report back to the HCCC and Board is required.

Category 5 - Refer for Conciliation

The Health Care Complaints Commission has assessed the complaint as one which is best resolved through conciliation. The Commission would then refer the matter to the Conciliation Registry.

There are currently no specific criteria to apply when assessing whether a complaint would be best dealt with by Conciliation. This will no doubt evolve as the Conciliation Registry increases its caseload and develops a large enough database to examine outcome.

As a general rule complaints which have had serious consequences for the complainant but do not indicate a departure from acceptable standards of practice by the doctor may benefit from conciliation. This forum provides an opportunity for the complainant to air their grievances and for the doctor to answer questions and provide any necessary explanations. In order for a matter to go to Conciliation both parties must agree. If one or the other party disagrees then the matter must be reassessed although as a general rule if the complainant declines conciliation, then the matter is closed.

Category 6 - For Investigation - Preliminary Inquiries

The Health Care Complaints Commission has assessed the complaint as one which may raise issues of public health or safety and further investigations are required.

The Commission is currently trialling an arrangement with the Medical Defence Unions to obtain responses and medical records from the "subject" doctors without the required statutory declaration. If successful this arrangement should facilitate the early resolution of many complaints. If in reviewing a complaint, the reviewer is unable to determine whether the matter is serious unless he or she obtains further information, then a complaint should be referred for Preliminary Investigations. The Commission will then seek to consult with the Board on the outcome of these preliminary investigations to determine whether further investigation is warranted.

Category 7 - For Investigation

The Health Care Complaints Commission must investigate a complaint if it or the Medical Board is of the opinion that the complaint must be investigated or where the complaint;

- raises issues of public health or safety
- raises a significant question as to the appropriate care or treatment of a client by a health service provider
- provides grounds for disciplinary action against a medical practitioner
- involves gross negligence on the part of the medical practitioner

The Commission investigates a complaint with a view to moving to prosecution of the complaint before the Board, Committee or Tribunal.

Category 8 - Direct Resolution

The Health Care Complaints Commission has assessed the complaint as one which is best resolved directly between the doctor and the patient. This category is similar to "Refer to another person or body" although the circumstances are that the complaint has arisen from an incident/treatment that occurred in the doctor's practice rather than a hospital.

The Commission is of the view that in circumstances where the complaint is not serious enough to investigate or refer to conciliation, then the complainant should still have an opportunity to seek an explanation from the doctor. Appendix A is an example of the standard letter that is forwarded to both doctor and complainant where a complaint is referred for direct resolution.

In general, complaints which have been referred for Direct Resolution concern the doctor's manner toward the patient and perceptions of incorrect diagnosis. There is currently no evidence to indicate the benefit or otherwise of referring a complaint to Direct Resolution.

QUICK REFERENCE TO HCCC ACTIONS

- "2" = Decline to Deal With**
 - "4" = Refer to another person or body**
 - "5" = Conciliation**
 - "6" = Preliminary Investigations**
 - "7" = Main Investigation**
 - "8" = Direct Resolution**
-