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SO MANY INQUIRIES, SAME OLD AHPRA

By
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The regulator remains unaccountable for its unfair treatment of doctors. The Ombudsman inquiry won't help – it's time for a Royal Commission.

'YOU SEEM'D OF LATE TO MAKE THE LAW A TYRANT.' – SHAKESPEARE, *MEASURE FOR MEASURE*

For over a decade, the Australian Health Practitioner Regulation Agency has been entrusted with the role of protecting the public from harm by monitoring and managing the registrations of the country's medical practitioners.

However, instead of providing the public with the support, protection, and accountability that it needs, and the fairness doctors the subject of complaints deserve, AHPRA's approach has been questionable, and in some cases downright disturbing.

For many years, AHPRA has been criticised for its lack of accountability and for biased, inconsistent decision-making. Concern regarding AHPRA's functioning has been a consistent feature since its establishment. Several inquiries into the operation of AHPRA and the National Law were conducted in 2011, 2014 (the Snowball Review), 2016 and 2017, with the most recent occurring in 2021-22.

Among the recommendations **made in the 2011 Senate inquiry** were the following.

6.11 The committee recommends that AHPRA should issue a letter of apology to practitioners who were deregistered because of the problems revealed by the inquiry and, where it is established a lapse or delay in registration took place, AHPRA should reimburse practitioners for any loss of direct Medicare payments.

6.20 The committee recommends that complaints processing within AHPRA be reviewed to ensure more accurate reporting of notifications and to reduce the impact of vexatious complaints on health practitioners.

AHPRA's response to the Senate's recommendations was such as to require their repetition **in its 2017 report:**

5.24 The committee recommends that AHPRA and the national boards develop and publish a framework for identifying and dealing with vexatious complaints.

5.28 The committee recommends that the COAG Health Council consider whether recourse and compensation processes should be made available to health practitioners subjected to vexatious claims.

AHPRA response to the former recommendation was to commission and pay for what appeared to be little more than a literature review and opinion survey[1]. No empirical data was collected, nor was any form of statistical analysis for significance was carried out. It did not survey doctors to determine what percentage claimed to be victims of such complaints, and thus could not analyse them to determine their validity or impact.

Perhaps unsurprisingly, AHPRA's CEO Martin Fletcher felt **emboldened to claim in a blog** that "We weren't surprised it confirmed our views." Nor was anyone else, but the "research" had done its job. As a result, the **2022 Senate report's recommendations**, while observing AHPRA's persistent failings in several other areas, contained no mention of vexatious complaints.

In this light, AHPRA's denial of the existence of vexatious complaints while in pursuit of them is arguably itself vexatious.

Recently and perhaps most disturbingly, an AHPRA investigator was found to have tampered materially with evidence presented in a medical disciplinary hearing. Subsequently the Supreme Court overturned the emergency ban imposed on a doctor, describing the evidence used by AHPRA as "unreliable"[2].

Rather than investigating the circumstances and taking remedial action, AHPRA dismissed it as an "isolated incident" by an investigator who "acted with the right intentions". So blatant a double standard cannot engender confidence in AHPRA's ability to further its stated aim of protecting the public, nor the need to ensure investigations are conducted expeditiously, competently, and fairly.

The unfairness of AHPRA's approach was acknowledged by one of their contracted researchers, who stated: "Broad and controversial 'public interest' test … leaves medical practitioners vulnerable to inconsistent decision-making. Compared to overseas jurisdictions, immediate action powers in Australia offer fewer procedural protections"[3].

In July 2022 the Victorian branch of the AMA called for a Royal Commission into AHPRA in response to the above, and to the Agency's move to **gag Dr David Berger's use of adjectives** in his robust criticism of management of the covid pandemic. It also prompted **an open letter** critical of AHPRA signed by 18 distinguished Australian doctors, including Professors Raina Macintyre, Kerryn Phelps and Guy Marks.

AHPRA now faces yet another inquiry, this time **conducted by the Health Ombudsman.** There is no reason to suppose it will prove of greater effectiveness than the previous ones.

The time is right for a Royal Commission into AHPRA with the capacity to compel and direct, to ensure that medical practitioners can practice their profession in the way it was envisioned – with compassion, competence, and just accountability.

Dr Gliksman is a physician in private practice in Sydney and a past vice-president & chair of Council of the AMA (NSW), and a past federal AMA councillor. He has never been the subject of a patient complaint to any regulatory body.

[1] Morris J; Canaway R; Bismark M. Reducing, Identifying and Managing Vexatious Complaints: Summary Report of a Literature Review Prepared for the Australian Health Practitioner Regulation Agency. Melbourne School of Population and Global Health: Centre for Health Policy. November 2017.

[2] *Shah (a pseudonym) v Medical Board of Australia* [2022] SASC 140

[3] Bradfield OM, Spittal MJ, Bismark MM. In Whose Interest? Recent Developments in Regulatory Immediate Action against Medical Practitioners in Australia. *J Law Med.* 2020 Dec;28(1):244-269. PMID: 33415903.