From:

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[redacted]

Submission No. 56
(Overseas Trained Doctors)
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To:

Committee Secretariat
Standing Committee on Health and Ageing
House of Representatives

STANDING COMMITTEE
- 3 FEB 2011
ON HEALTH AND AGEING

Dear Sir,

I wish to express my concerns and comments to the committee enquiring into the evaluation process for overseas trained doctors, allegedly resulting from public protest over deregistration of [redacted]

Terms of Reference
Recognising the vital role of colleges in setting and maintaining high standards for the registration of overseas trained doctors (OTDs), the Committee will:

1) Explore current administrative processes and accountability measures to determine if there are ways OTDs could better understand colleges' assessment processes, appeal mechanisms could be clarified, and the community better understand and accept registration decisions;

2) Report on the support programs available through the Commonwealth and State and Territory governments, professional organisations and colleges to assist OTDs to meet registration requirements, and provide suggestions for the enhancement and integration of these programs; and

3) Suggest ways to remove impediments and promote pathways for OTDs to achieve full Australian qualification, particularly in regional areas, without lowering the necessary standards required by colleges and regulatory bodies.

Preamble
Although not specifically stated in the terms of reference it is understood that the committee is dealing with the issues from a general policy perspective.
This is a restricted approach.
It should be appreciated that for patients, who rely on the skills and knowledge of OTD's, the standard of care is a personal issue that goes beyond policy and individual submissions can only be based on individual experience.

In order to address the issues and provide evidence of system failures it is necessary to refer to specific incidents and individuals because these are examples of a community problem that the committee must address in order that further deaths, injuries and malpractice claims can be reduced or avoided.

This submission is not intended to be a grievance document, that is a matter for the courts, but the issues are, in my opinion, of sufficient gravity that policy considerations must include better community safeguards and mandatory measures, including more severe penalties for dealing with any lack of application by those in authority and for failure to strictly follow registration requirements or supervisory and administrative guidelines at every level.

The Terms of Reference presume that a high standard for the registration of overseas trained practitioners already exists. This is a false premise.

Setting a standard does not ensure compliance and it has been my experience that patients may be at risk due to administrative and supervisory defects or ineptitude.

The situation with Dr Patel was a clear example of administrative failure and ineptitude within the system, which policy changes and AHPRA have failed to improve because provisions are ignored.

Citing the example best known to me, the death of my wife as a result of medical negligence by Dr [redacted]. I am at a complete loss as to how Dr [redacted] was re-registered without the required AHPRA information being made public when he has admitted negligent acts and omissions that amount to manslaughter, as defined by the Criminal Code, and where there was an obvious requirement that for any future registration, in addition to supervision, a prohibition should have been placed on the registrant's ability to prescribe schedule A drugs. (Ref. A).

If the public is to better understand and accept registration decisions it cannot do so in the information vacuum that currently exists and it should not be necessary for affected patients or next of kin to suffer further emotional trauma as a result of inadequate or incomplete information or the time consuming and often expensive process of FOI. [redacted]

Many OTDs in rural and regional areas are employed at a private practice where, because of a practitioner shortage or high patient ratio, no or inadequate supervision and mentoring is available.

At the inquest into my wife's death evidence by Dr [redacted] made it clear that OTDs at the [redacted] were neither mentored nor supervised.
Dr [redacted] stated the OTDs simply discussed things among themselves. [redacted]
This is unacceptable.

The RAGP "Handbook for the Management of Health Information in Private Practice" details the information required in relation to keeping medical records. Previous reminders to medical practitioners in Bulletin no. 16 issued in 2002 attached to [redacted] referenced the need for contemporaneous records.
The requirement was not complied with despite employer supervision being required.

It is unlikely this is an isolated situation and highly probable that many OTDs would be working in a similar environment with inadequate or non-existent mentoring or supervision and little understanding of protocols or requirements that may be unfamiliar, in particular where there are significant cultural differences, which may impact on the required Australian standards.

The highest standards of professionalism should apply at all levels. Registration, supervision, mentoring, communication skills, training and social integration are all necessary requirements for OTD's. They can not be achieved if the deficiencies identified in [redacted] are not addressed.

I therefore request the committee address these concerns and omissions in the Terms of reference with a view to affording better protection for patients and recommending substantial penalties for incompetent or neglectful administrators and supervisors.
Anything less will result in ongoing risk to patients. As to which I direct the attention of the Committee to the Queensland Government attempt to close the door on the Patel issue by accusing Morris Q.C. and his deputies of "ostensible bias" in what was clearly a cover up for administrative ineptitude of epic proportions on which the CMC has failed to act despite assurances by the Queensland Premier.

Language Skills
There has been extensive public protest over deregistration of Dr. [redacted], an overseas trained practitioner at the [redacted]
Dr [redacted] has allegedly failed to meet the high standard of professionalism and language comprehension required by the Board.
Given the evidence to the Coroner by Dr [redacted] this comes as no surprise and primary support from other OTDs fails to address the requirement for training, integration and supervision.

Language comprehension is often dependent on the person understanding local idiom. Language in common usage to native born Australians is often incomprehensible to migrants, even those whose first language is English or American English; and many words or expressions can have vastly different meaning even between Australian born people of different generations or localities.

I was born in and migrated from the U.K. over fifty years ago and it took some time to come to terms with some of the language and cultural differences.
I believe it was Sir Winston Churchill who, commenting on the USA and Great Britain, regarded them as two great nations divided by a common language. The same applies to Australia, so how much harder is it for a person whose first language is not English, who works long hours at his job, may be on call after hours, has family commitments and spends his spare time studying to improve medical skills?

English is a living language. Expressions and meanings change with each generation so a word used by a young person may have a different meaning to the same word used by an elderly one. As for example "cool", "neat", "gay" and many more. Understanding requires socialisation on a wider range than that which [redacted] evidenced and certainly takes more time than allowed by the registering authority.

Idiom or slang should not form any part of the requirement for understanding language in medical practice, especially where the probationary period is short.
Correct and proper language must be the main criteria. It is why Latin, a dead language, became the language of law and medicine. It means the same whoever uses it.

If an OTP fails to understand the difference in cultural usage, as was reportedly the case with Dr [redacted], the level of mentoring, study programs and the assistance of volunteer language tutors should be examined and considered.
This requirement should be incorporated in mandatory supervision and training programs.

Requirements for OTDs to attend compulsory language classes in English as a Second Language on two evenings per week for a two hour period would assist in addressing this deficiency.
Programs are available though TAFE and qualification should be obtained by examination.

OTHER SUPERVISION REQUIREMENTS

At the time of D[redacted] initial registration it was the policy of the Queensland Medical Board for a document containing supervision details to be attached to applications by overseas trained practitioners. [redacted]

Dr [redacted] the practice principal who engaged OTDs at [redacted] or his practice manager, should have provided the supervision document for attachment to each application by an OTD who sought to practice at the [redacted]

Following my wife's death I learned through FOI that no such document was attached to Dr [redacted] application.
Dr [redacted] was registered by the Queensland Medical Board contrary to its stated policy.

As detailed in a letter from Barriste[redacted] the Board, through its CEO, was most reluctant to provide information that would assist my complaint and subsequent claim.
In particular it failed to respond to an information request for the supervision documents that were required as part of the practitioner application under its policy made pursuant to the Medical Practitioners Act 2001.

Release of information required involvement by the information commissioner, following which I was advised to the effect that the Board had no record of the supervision details required to be attached to Dr [redacted] application for registration.

The Board informed me I had been provided with all the documents it had and, despite numerous requests including discovery from solicitors for Dr [redacted] and Dr [redacted] made under the Personal Injuries Procedures Act and the Rules of the Supreme Court of Queensland, no supervision document was ever produced.
In a letter dated [redacted], the Board advised Dr [redacted] had held registration since 2000 to fill various areas of need under supervision.
If no supervision document ever existed the Queensland Medical Board was derelict in its duty to ensure high standards for the registration of overseas trained doctors (OTDs) was being maintained.

I am unaware as to whether a supervision document was provided with Dr [redacted] application but circumstances suggests the same lapses in control and verification as applied to Dr [redacted] also applied to Dr [redacted] Dr [redacted] and to other OTDs at this practice and other practices operated by Dr. [redacted]

This is not dissimilar to the Patel situation. Both cases evidence slipshod administration and culpability by the Queensland Medical Board. Both resulted in avoidable loss of life and it is unlikely this administrative failure is not more widespread.

According to the Courier Mail [redacted] has a chronic G.P. shortage and Dr [redacted] saw fifty patients a day.

If a similar workload applied to other practitioners at [redacted] this would support the sworn evidence of Dr [redacted] that supervision was non-existent. Practice principle Dr [redacted] simply would not have time to see his own patients, supervise the OTDs and attend the other practices he conducted.

This lack of supervision and mentoring does not accord with the Terms of Reference presumption that there is a high standard for the registration of overseas trained practitioners.
Mentoring and supervision are essential in bringing OTDs to the same standard as Australian trained practitioners.

Section 222 of the *Health Practitioners Regulation National Law Act 2009* provides for the mandatory keeping of public registers of health practitioners.
Sections 225 and 227 provide the specifics of entry details.

If the details are not included how can the community understand or accept registration decisions where the State registering authority ignores its own policy, ignores the AHPRA requirements, appears to be a law unto itself and the National Agency takes no action to address the deficiencies?

<u>Queensland Medical Board and</u> [redacted]
Following the Patel debacle in 2003 Queensland Premier Peter Beattie publicly stated that the registration of overseas practitioners by the Queensland Medical Board was subject to tighter controls.

In light of my own experience I see no improvement by the Board and no concern for deficiencies or laxity that places patients at risk.
My wife was not the only patient who was misdiagnosed at [redacted] I have been informed first hand by others who allege they were misdiagnosed and put at risk.

Subsequent to my wife's death a ministerial briefing document issued by the Queensland Medical Board was "amended" prior to forwarding [redacted].
It is my opinion that the alteration resulted in reducing the impact of the situation and it is possible the minister was to some degree misled by the Board.
Furthermore, having failed to carry out a proper examination of his patient and record treatment, and having treated her with excessive opiates how could the Board possibly suggest that no imminent threat to others existed. Negligence with one patient surely implies the possibility of risk to others.

Playing down situations in reports does not facilitate the high standards expected from the Board or the Minister where they are required to secure the safety or the trust of patients; nor does it assist the community to better understand and accept registration decisions. It only generates mistrust that results in a level of antipathy towards some OTD's.

Despite a number of letters to the Queensland Medical Board it took no action to safeguard the public from further negligence and the dismissal of Dr [redacted] only occurred following a Queensland Times publication a week after the Coroner's finding. [redacted]
Information had also been sought by the Coroner at the request of Crown Law. The Board did not respond. [redacted]

It would not be unreasonable to consider the Board was more concerned with damage control over its own failures & shortcomings that it was for public safety.

In the course of an ensuing dependency claim I was informed by Dr [redacted] that Dr [redacted] was an independent practitioner at the [redacted], notwithstanding such independence being precluded by:

- The requirement for Dr [redacted]'s employer to provide supervision details prior to registration.
- Dr [redacted] being required to be supervised.
- Dr [redacted] submitting an annual report on OTDs at his practice.
- Dr [redacted] being unable to obtain a provider number due to insufficient period of Australian residence and his registration being limited to an area of need.
- Dr [redacted] being subsequently dismissed by Dr [redacted] A situation that obviously could not occur if Dr [redacted] was an "independent" practitioner.

[redacted] has a number of OTDs and is one of several practices operated by Dr [redacted] where OTDs are engaged.

Dr [redacted] has a substantial patient list of his own and it is inconsistent with the scale of patients and the number of practices that he could provide adequate or even any supervision of OTDs who were attempting to obtain full registration.

While the [redacted] is only one example I am seriously concerned that the engagement of OTDs in other medical practices is used as an income producing exercise, ignores procedure and has scant regard for public safety or medical proficiency.
The blame for any failing is placed solely on the alleged "independent" OTDs, who are simply replaced, and the private practice and Medical Board remain unaffected and continue non-compliance without penalty.

On the basis of the Board's policy requirement and its failure to obtain the supervision details prior to registering Dr [redacted] under S.135 of the Medical Practitioners Act 2001 the Board failed in its duty and registered Dr [redacted] in contravention of its own policy.

It is my opinion that, by failing to properly supervise or mentor, and by absolving himself because the OTDs at his practice were alleged to be "independent contractors", Dr [redacted] failed in his duty and responsibility.

Neither the actions of Dr [redacted] or those of the Queensland Medical Board engender confidence that the interests and welfare of patients is properly considered or protected where the required protocols are imply ignored. They certainly can't engender confidence by the community that the registration process affords patients some measure of protection from poorly trained practitioners.
Again it is considered unlikely that these deficiencies are confined to one practice.

Registration and AHPRA
Following the Board's refusal to re-register Dr [redacted] on 16 October 2007 the Health Practitioners Tribunal suspended Dr [redacted]'s registration for a period of two years from the date of his dismissal by D [redacted] on [redacted]

The Board has now re-registered Dr [redacted] with a requirement for supervision. As this was the Board's policy at the time he was originally registered, and no direct supervision was undertaken, nothing appears to have changed and it appears the QMB is largely unaffected either by my concerns or those of the unfortunate patients of Dr Patel in Bundaberg.

The Board was clearly derelict in its duty to verify Dr Patel's credentials, which it took at face value. It seemingly did the same with Dr [redacted]s credentials as discussed in the barrister's letter of [redacted] and, if this attitude applies to all OTPs, who knows how many incompetent practitioners are putting patients are at risk in Queensland?

This is not intended to slight OTPs generally but to draw attention to the attitude of the Queensland Medical Board, which clearly leaves much to be desired, and its obvious culpability in relation to death or injury resulting from failure to follow its own policy or to verify information and properly investigate an applicant's history when registering practitioners and ensure OTPs are properly mentored.
The Schedule Health Practitioner Regulation National Law Act 2009 (the Act) provides that, from 01 July 2010 the public information on the register must include:-

- S. 225 (d): the date on which the practitioner was **first** registered in the health profession in Australia, whether under this Law or a corresponding prior Act;

- S.225 (l): if the practitioner's registration is suspended, the fact that the practitioner's registration has been suspended and, if the suspension is for a specified period, the period during which the suspension applies.

The Tribunal order was for a two year suspension period commencing on the date of Dr [redacted] dismissal by Dr [redacted].
On checking the public record of Dr [redacted] re-registration under the Health Practitioner Regulation National Law Act 2009 I noted that the provisions of S 225 (d) and S 225 (l) had not been met.
This and other mandatory information does not appear on the AHPRA register and it appears the Board has ignored not only its policy but Commonwealth law.
Enquiries made to APHRA elicited advice that information required by the Act came from the Queensland Medical Board records.

The discrepancies were first brought to the attention of AHPRA in July 2010. They were subsequently conveyed in writing to the Member for [redacted]. As of December 2010 the required public information was not on the AHPRA web site.
[redacted]

It is a matter of serious concern that the Board is not doing its job, as required by the Act, and that the public are not able to ascertain important information about their medical practitioner where this was the stated intention when the Act was introduced.

Unless laws are enforced, including enforcement for medical boards, employers and applicants the intended community protection is simply an exercise in political rhetoric and expediency.
How can the community have any confidence in the registration process in these circumstances?

The objects of this inquiry, to remove impediments and promote pathways for OTDs to achieve full Australian qualification, particularly in regional areas, without lowering the necessary standards required by colleges and regulatory bodies, fails to include the expectation by the community that these high standards will be adhered to by the registering authority and by employers.

This can only be achieved if the relevant registration and monitoring authorities are required to fully comply with their obligations and are held fully accountable.
To this end they too must be subject to monitoring for performance and efficiency and, if found wanting, face similar penalties to those whom they register and/or employ.

Thank you for considering my submission.

Yours faithfully

01 FEB 2011

Ian Shaw