Medical Board of South Australia

Our ref: 273/09

30 April 2009

The Secretary
Senate Community Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By Email: community.affairs.sen@aph.gov.au

Dear Sir or Madam

I enclose a submission[1] to the Senate Inquiry into the National Registration and Accreditation Scheme for Doctors and Other Health Workers. This has been prepared by the community members of the Medical Board of South Australia and has the Board's full support.

Our Board has been concerned for some time that there continues to be a perception amongst the public that the Medical Profession in Australia self regulates and that its processes are not transparent.

As this submission points out *inter alia* this is not the case. Medical regulatory agencies around the world have increased lay membership over the last two decades. The experience has been overwhelmingly positive along the lines outlined in this submission.

One of the tasks of the new Scheme will be to correct this misapprehension. Community members have the same fiduciary responsibility as other members to protect the safety and dignity of the general public in their dealings with the profession. For that reason it is crucial that they do not represent specific constituencies and that their selection and appointment processes are open and transparent.

Yours sincerely

DR TREVOR MUDGE
PRESIDENT
MEDICAL BOARD OF SOUTH AUSTRALIA

Enc[1] MBSA Community Members Submission

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Submission to the Senate Community Affairs Committee

INQUIRY INTO THE NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR DOCTORS AND OTHER HEALTH WORKERS

From
COMMUNITY MEMBERS OF THE MEDICAL BOARD OF SOUTH AUSTRALIA

This submission is based on the outcomes of a meeting of community members of state and territory medical boards held in Melbourne on March 17, 2009. The views expressed in this submission reflect the opinions of those present at that meeting (including all the community members of the Medical Board of South Australia) they do not necessarily reflect the views of all individual medical boards or of all of their community members. These caveats notwithstanding, there was a strong general consensus emerging from the meeting that is reflected in this submission. We do not attempt to address all the terms of reference of the inquiry, and focus our comments on the role of community membership of boards in the proposed arrangements.

We also note that there has been some reference in submissions to the NRAS that the medical boards function as a means of professional self-regulation. We dispute that view. The profession is not "self regulating" given that the composition of medical boards includes community and members from other disciplines operating within specific legislation. (For example 5 of the 12 members of the Medical Board of South Australia are non-medical.) Rather, current state and territory medical boards are regulators protecting the public interest (with reference to objects and framework of relevant Acts).

Members present at the meeting

Ms Moira Deslandes	Medical Board of South Australia
Mr Paul Laris	Medical Board of South Australia
Ms Sophia Panagiotidis	Medical Practitioners Board of Victoria
Ms Kerren Clark	Medical Practitioners Board of Victoria
Ms Prudence Ford	Medical Board of Western Australia
Mr Antony Carpentieri	New South Wales Medical Board
Ms Diane Walsh	Northern Territory Medical Board
Mr Michael Clare	Medical Board of Queensland
Ms Megan Lauder	Medical Board of the ACT
Apologies:	
Dr Christine Putland	Medical Board of South Australia
Ms Virginia Rivalland	Medical Board of Western Australia
Mr Sean Lusk	Medical Practitioners Board of Victoria
Medical Council of Tasmania	

The function of community (lay) perspectives in current arrangements

- Enable expression of community views and expectations - build public confidence
- Community members prompt a focus on public interest in decision making about regulatory and professional conduct matters

- Shared governance expertise within the professional context, for example, strategic planning, financial management, communication
- Diversity of views enhances decision making. Medical professionals, community members, and lawyers bring different perspectives to discussions and decision making.
- Value of strategic/broader principle considerations versus clinical detail and experience.
- Balances public interest/individual views with objects and principles underpinning the legislative framework.
- Communicates outcomes back to the public through networks facilitating better awareness of what are reasonable expectations for the community to have of the profession.

Principles we want to see embedded in the new arrangements for National and State/Territory bodies

- "Community" not "consumer" representation. Community members should *not* be appointed as a representative of any particular consumer interest, but act as citizens to represent the broader public interest
- At least 1/3 of all bodies to be community members
- Lawyer members to be separate from and additional to, 1/3 community members. Important to have a least one legally trained member
- Community representation in the public interest should be a feature of all levels of the NRAS, including state based bodies
- Transparent, visible selection process for all members – non representative positions
- Diversity in membership is vital and
    - Fosters informed and transparent decision making
    - Enhances governance expertise
    - Gives voice to the voiceless
- The accumulated knowledge and experience of existing lay members should not be lost in the transition process

The importance of "Separation of Powers" – Who Should Investigate Complaints?

- The new framework refers to "notifier". This reflects the objective of investigating notifications for the purpose of establishing whether unprofessional conduct has occurred rather than resolving a complaint.
- The role of Medical Boards is to protect the public not to "put things right for complainant".
- There is a danger that a process of investigation that conflates complaints resolution for individuals with assessing and limiting risk to public health and safety through regulation will satisfy neither objective.
- Notifiers should be offered support to access/navigate the system - not as party to a "complaint" but as notifier or "witness".

Key Principles

- Preserve transparent complaint management structures and decision making
    - Tiered system preserves principles of natural justice.
- Optimum standards to apply, uniformly across professions, enhancing both access and public safety. The community expects highest ethical standards.

- Preserve professional expertise/review in early phase of notification in order to identify issues of public interest and determine level of risk.
- Preserve integration of regulatory and investigative process.
- Preserve capacity to act quickly at State/Territory level to protect public from perceived risk.
- Preserve ability to change the pathway that the matter takes – disciplinary, competency and impairment.
- Notifier to have the right of independent review if the decision in the preliminary phase is not to investigate.
    - Grounds for review include substance as well as administrative review
    - Grounds for request for review to be articulated by notifier
    - Parameters to trigger review to be set. (Reference made to the arrangements in S68 of the Consumer, Trade and Tenancy Act NSW).
- Preserve the capacity for issues of strategic/public interest to be raised across sectors and jurisdictions.
- Ensure public access to Medical Board at State/Territory level through effective pathways and communication.
- Effective protocols and communication arrangements between regulators and Health Complaints Commissioners at State level.
- Capacity at State/Territory level to "triage" notifications.

Other issues

- Importance of effective communication and consultation to be reflected in new operational arrangements:
    - Informed decision making. For example, demographic/geographic stakeholders relevant to people affected by Board's decision to be consulted prior to release of guidelines. An example of this is the Victorian Medical Board's establishment of a Community Consultative Committee which has a number of people selected through public advertisement appointed to serve on the Committee at arms length. The nominees are selected on the basis of their community involvement, commitment to issues of public safety by health professions and their capacity to approach issues strategically. Items of public interest and Board processes eg letters to notifiers and any public information produced by the Board are presented to them for input/scrutiny to ensure that community input is obtained as necessary.
    - Community members of Boards and other NRAS bodies need adequate and appropriate orientation, support and access to information. It should be acknowledged that a diverse membership will require differing levels and types of support.
    - Pro-forma's for appropriate language and sensitive communications in letters to notifiers about progress and outcome of notification.

This Submission has been prepared by the community members of the Medical Board of South Australia : 199 Ward Street, North Adelaide 5006 South Australia
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April 16, 2009