This is the regular column from Michael and Ruth with a focus on legal issues for paramedics. Questions, comments and suggestions for discussion items are very welcome and encouraged, so if you have a question you would like to have answered send it through! You can send any questions, comments or statements to me at editor@paramedics.org.au or direct to Michael at michael.eburn@anu.edu.au.

Legal Issues for Paramedics

Professional Discipline for Registered Health Professionals: Lessons for Australian Paramedics

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A number of proposals for the regulation and registration for paramedics have been considered by the Australian Health Ministers' Advisory Council Health Workforce Principal Committee. One proposal is that paramedics join doctors, nurses and 14 other professions as registered health professionals under the national registration scheme. One implication of professional registration is that all registered paramedics would then be subject to a national, independent professional disciplinary system. Currently, any complaint about a paramedic's practice would be made to their employer who would deal with the matter as an internal employment issue.[1] With registration would come a professional disciplinary process, separate to the employer, that would consider complaints and that could impose penalties, up to and including cancelling a paramedic's registration, for cases of proved unsatisfactory, unprofessional or professional misconduct.

Paramedics are already registered health professional in the United Kingdom (UK) with approximately 19300 paramedics registered by the UK's Health and Care Professions Council (HCPC)[2]. In 2012-2013, 262 cases alleging breach of a paramedic's 'fitness to practice' were investigated by the HCPC. With paramedics likely to be required to be registered health practitioners in Australia in the near future, it is an opportune time to explore some of the issues raised by the UK experience.

Registration of health professionals in Australia

The *Health Practitioner Regulation National Law (Queensland)* has been adopted in all Australian States and Territories and is known as 'the *'National Law Act'*. This Act establishes the Australian Health Practitioner Regulation Agency (AHPRA) and forms the legislative basis for national registration of 14 different health professions[3]. The objectives of the Australian national registration and accreditation scheme are 'to provide for the protection of the public by ensuring that only health practitioners[5] who are suitably trained and qualified to practice in a competent and ethical manner are registered'.[4]

Each profession has a national board. AHPRA provides support to the National Boards by administering the registration process; accepting and investigating complaints about professional conduct, performance or the health of registered health practitioners and working with the Health Complaints Commissions in each state and territory to make sure community concerns are being appropriately dealt with. AHPRA also supports the Boards in the development of registration standards, codes and guidelines and publishes information about the registration of individual health practitioners. This information is made freely available to the public.

There are many criteria required to be met for registration including having the necessary educational qualifications. One other key criterion is that the practitioner be of good character, that is, that they are a 'fit and proper' person to hold registration. This term is largely subjective and has no precise legal meaning. The New South Wales Supreme Court has determined that the concept of 'fit and proper' involves three elements – honesty, knowledge and ability.[6] In essence a practitioner must have the knowledge, skills and character to practice their profession safely and effectively but it extends further to encompass the way in which an individual practitioner's behaviour may impact on the public's perception and confidence in the profession. The *National Law Act* allows for the 'conduct of the practitioner, *whether occurring in connection with the practice of the health practitioner's profession or not*'[7], to be examined when determining whether or not a practitioner is a fit and proper person to hold registration.

Paramedic registration

A number of proposals for the regulation and registration for paramedics have been considered by the Australian Health Ministers' Advisory Council Health Workforce Principal Committee. Option 4 is Registration of paramedics through the National Scheme:

> *Under this option, the Health Practitioner Regulation National Law Act 2009 (the National Law) would be amended to include the profession of paramedics as a regulated profession under the National Law.*[9]

The benefit of registering paramedics under the National Scheme (as opposed to the other options of 'No change – rely on existing regulatory and non-regulatory mechanisms, and a voluntary code of practice'; Strengthen statutory health complaint mechanisms – statutory code of conduct and powers to prohibit those who breach the code from continuing to provide health services' and 'Strengthen State and Territory regulation of paramedics') is that it will allow for the provision of a standardised, national, independent disciplinary or quality assurance mechanism for registered paramedics and more particularly for those working outside the state ambulance services.

Complaints about the conduct of a registered health practitioner can be made by anyone, other practitioners, colleagues, employers, education providers, patients, families of patients – anyone at all. There is a mandatory reporting requirement for registered practitioners to report other registered practitioners, or students undertaking clinical training, to AHPRA, if they form 'the reasonable belief' that person has 'an impairment that may place the public at substantial risk of harm (has a health issue); is practicing whilst intoxicated by alcohol or drugs; engages in sexual misconduct in the practice of the profession; or is placing the public at risk because of a significant departure from accepted professional standards'.[10] This mandatory requirement to report 'notifiable conduct' reinforces the view that registered health practitioners have an overriding professional and ethical obligation to protect and promote public health and safe healthcare above their own or their colleagues' interests.

The complaint can be categorised in one or more of the following ways, that the practitioner has engaged in 'Unsatisfactory professional performance', 'Unprofessional conduct' or 'Professional misconduct'. Under the *National Law Act* those terms are defined as:-

> ***'Unsatisfactory professional performance...*** means [that] the knowledge, skill or judgment possessed, or care exercised by, the practitioner ...is below the standard reasonably expected of a health practitioner of an equivalent level of training or experience.[11]
>
> ***Unprofessional conduct...*** means professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers, and includes—
>
> (a) a contravention by the practitioner of ... [the National Law Act], whether or not the practitioner has been prosecuted for, or convicted of, an offence in relation to the contravention; and

(b) a contravention by the practitioner of—
  (i) a condition to which the practitioner's registration was subject; or
  (ii) an undertaking given by the practitioner to the National Board that registers the practitioner; and
(c) the conviction of the practitioner for an offence under another Act, the nature of which may affect the practitioner's suitability to continue to practise the profession; and
(d) providing a person with health services of a kind that are excessive, unnecessary or otherwise not reasonably required for the person's well-being; and
(e) influencing, or attempting to influence, the conduct of another registered health practitioner in a way that may compromise patient care; and
(f) accepting a benefit as inducement, consideration or reward for referring another person to a health service provider or recommending another person use or consult with a health service provider; and
(g) offering or giving a person a benefit, consideration or reward in return for the person referring another person to the practitioner or recommending to another person that the person use a health service provided by the practitioner; and
(h) referring a person to, or recommending that a person use or consult, another health service provider, health service or health product if the practitioner has a pecuniary interest in giving that referral or recommendation, unless the practitioner discloses the nature of that interest to the person before or at the time of giving the referral or recommendation.

Professional misconduct... includes—
(a) unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and
(b) more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and
(c) conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession.'[12]

The complaint will be investigated and if deemed to have substance will be sent to either a Performance and Professional Standard panels ('panel') to hear allegations of 'Unsatisfactory professional performance', 'Unprofessional conduct'; or to a 'Tribunal' for allegations of professional misconduct. Panels and the Tribunal are independent of National Boards and are made up of a range of members, including members from the practitioner's own profession, a non-health practitioner (usually a community member) and a lawyer.

Panels and Tribunals can find that a practitioner has no case to answer and no further action is taken. If, on the other hand, the panel or tribunal finds that the allegation is proved, there is a tiered approach to sanctions to ensure that the severity of the sanction is commensurate with the level of risk posed to the public or the profession by the practitioner. For example, it would not be appropriate for a practitioner to be struck off the register for a one-off error that does not fall substantially below the standard expected of a reasonable practitioner in circumstances that does not demonstrate that the practitioner is not a 'fit and proper person' to hold registration. Only the tribunal can find a practitioner guilty of professional misconduct and that is the only finding that can result in a practitioner being removed from the register.

Both the panel and tribunal are required to abide by the legal principles of due process and procedural fairness. This means that those who have a complaint brought against them always have a right to an unbiased hearing and a right of reply. At Tribunal hearings, a lawyer can represent practitioners.

As there is currently no national space for the collection of data regarding complaints against paramedics in Australia, it is difficult to know how many complaints are made about paramedics and for what reasons. Registration with AHPRA would allow for the capture and collation of that data and the opportunity to provide the public with access to nationally standardised information about paramedic education, competency and professional practice standards. An examination of data regarding UK paramedic disciplinary matters can provide Australian paramedics with some knowledge of the key areas of practise that present as an issue for their UK counterparts.

The UK Experience

In 2012-2013, 262 cases alleging breach of a paramedic's 'fitness to practice' were investigated by the HCPC. The type of behaviour complained about included assault, criminal damage, drink driving, drugs possession, fraud, possession of child pornography, attending work under the influence of alcohol, bullying and harassment of colleagues, engaging in a sexual relationship with a service user, failing to provide adequate care, false claim to qualifications and self administration of medication.

Of the cases investigated, 11 paramedics were cautioned, 1 had conditions placed on their practice, 16 cases were determined to be not well founded, 15 were struck off the register, 22 were suspended from the register and 2 voluntarily removed themselves from the register. The remaining 192 cases were not pursued. The proportion of paramedics who were formally sanctioned represented only 0.0027% of the total registered paramedic population and this proportion is consistent with numbers across all registered health practitioners. One conclusion that can be drawn from this evidence is , "... that there continue to be so few allegations largely because the vast majority of registrants are committed to their job and vocation to help others ... they therefore maintain their competence, continue to develop professionally and do not misbehave."

The reasons for sanctioning practitioners is because they represent an abuse of trust, or power, amount to an exploitation or deception of a vulnerable person for personal gain, a failure to respect the rights of patients to make choices for themselves about their own care, and/or pose a risk to the safety of the patient that is contrary to the purpose of the profession. A percentage of actions demonstrate a failure to act legally, but in all cases, there has been a failure to act ethically, professionally, and thus these actions can undermine the public's confidence in the profession. An open and transparent disciplinary process also assists in the maintenance of confidence by the public in the health professions.

We have developed the following typologies for classification of the cases that resulted in action being taken by the Council followed by a brief description of the behaviour. They are listed from the most commonly presenting typology to the least common:-

- **Clinical competency matters:** Two paramedics were struck off for failing to provide appropriate care to a patient and colluding to alter paperwork; another was struck off for breaching patient confidentiality and providing inadequate clinical care; one was struck off for inadequate clinical care and communication with patients; one removed himself for failing to provide adequate patient care; and eighteen others were suspended, had conditions placed on their practice or were cautioned for providing inadequate assessment, communication with, intervention and care of a patient and inadequate clinical reasoning skills, leaving the patient unattended, failure to update assessment, and dishonesty, and misleading behaviour, poor record keeping and poor communication with colleagues.
- **Drug related matters:** A paramedic was struck off following a conviction for theft, fraud and possession of drugs; one paramedic removed himself from the register for administering an incorrect drug to a patient, failing to complete paperwork and handover the patient properly; another received a suspension for recreational use of illegal drugs; a paramedic was cautioned for self administering Entonox; another was cautioned for receiving a police caution for possession of a controlled drug.
- **Inappropriate behaviour:** Two paramedics were suspended or cautioned for inappropriate behaviour towards a service user and providing inadequate clinical care; another was suspended for aggressive behaviour towards a service user; yet another was suspended for inappropriate behaviour towards colleagues and failing to assist an injured pedestrian.
- **Failure to attend:** A paramedic was stuck off for sabotaging an ambulance vehicle to avoid attending a patient, and another was struck for refusing to attend; and yet another was struck off for failing to respond appropriately to an emergency call and providing inadequate clinical care.
- **Offences against children:** Three paramedics were struck off for engaging in sexually explicit exchanges with a person believed to be a minor; downloading, viewing and storing indecent images of children and a conviction of sexual activity with a child.
- **Driving under the influence:** Three paramedics were suspended following a conviction of driving under the influence.
- **Sexual behaviour:** A paramedic was struck off following conviction of voyeurism; and another was suspended for inappropriate sexual behaviour towards member of the public.
- **Unauthorised use of vehicles:** A paramedic another cautioned for taking a service vehicle for personal use whilst on duty; one was suspended for allowing an unqualified person to drive the ambulance.
- **Fraud:** A paramedic was struck off for fraud and another was struck off for dishonesty and issuing false course certification to a doctor.
- **Social media:** A paramedic was cautioned following the posting of inappropriate comments on a social networking site.
- **Assault:** A paramedic was suspended following a conviction for assault by beating, and breaching a court order.
- **Theft:** A paramedic was struck off for theft
- **Practising whilst not registered:** A paramedic was suspended after practicing whilst not registered

Although we cannot compare this data to the Australian experience because that data is not available, we thought we can look at the most common professional practice issues that resulted in disciplinary action against registered nurses and doctors in Australia (excluding NSW) in the same period 2012-2013. This data set is comparable because paramedic practice involves a mix of practice type and skills that are associated with both medical and nursing practice and therefore likely to mirror the behaviours of paramedics. The numbers of cases as a proportion of the number of practitioners was smaller than that of paramedics in the UK.[15]

The types of behaviours that were sanctioned by the Performance and Professional Standards panel against registered medical practitioners as constituting unprofessional conduct and unsatisfactory performance are listed from the most common to least common.

- **Clinical Care:** Inadequate or inappropriate testing or investigations or treatment, inaccurate or misleading health records. Inadequate follow-up, Missed, incorrect or delayed diagnosis, Communication in disrespectful manner
- **Medication Related:** Inappropriate prescribing; one unlawful, inaccurate prescribing; delayed referral, inadequate/ in-appropriate treatment; inadequate, inaccurate, misleading documentation,
- **Breach of condition of registration:** Failure to cooperate with the investigation of a notification/breach of undertaking.
- **Boundary Violation:** Inappropriate sexual comments and inappropriate sexual conduct; breach of confidentiality; inappropriate collection or use of patient information,
- **Informed Consent:** Failure to provide adequate or accurate information, failure to assess patient's capacity to consent, documentation inadequate, inaccurate or misleading.
- **Breach Confidentiality:** Inappropriate disclosure of patient information, documentation, health report, inaccurate or misleading
- **Documentation:** Health report – delay or failure to provide; Inappropriate maintenance/disposal.
- **Inappropriate Behaviour:** Aggressive towards service user.
- **Assault**
- **Conflict of Interest:** Failure to disclose or properly manage a conflict of interest.
- **Advertising breach:** Providing care beyond scope of practice.
- **Health Impairment:** Misuse, abuse of drugs.[16]

In the same period sanctions against nurses in Australia were as follows:

- **Clinical care:** Inadequate or inappropriate monitoring, referral, providing care beyond scope of practice.
- **Boundary violation:** Inappropriate sexual relationship, poor documentation
- **Behaviour:** Aggressive, inappropriate sexual relationship, poor documentation.
- **Registration:** Obtained using false or misleading information
- **Documentation:** Inadequate or inaccurate or misleading health record.
- **Health Impairment** [17]

Conclusion

The data above gives some indication of the sort of issues that have arisen in paramedic practice in the UK as well as some details on complaints against medical and nursing practitioners in Australia and therefore helps to identify the types of behaviours that present as a problem for paramedics, nurses and doctors with regard to their professional practice. Those behaviours included poor clinical care specifically providing inappropriate and/or inadequate treatment, working beyond a suitable scope of practise, inappropriate or inaccurate prescribing of medication, delayed referral, inadequate, inaccurate or misleading documentation, poor communication with patients (ie lack of information) and colleagues, poor monitoring of and inappropriate relationships with the patient. It also included criminal behaviour like assault, drink driving and fraud.

One benefit the proposed national registration of paramedics will bring is to place paramedics under the National Law that governs other health professionals. That scheme will allow for an open, independent, standardised process to review the professional performance of registered paramedics, and the establishment of a database that will provide paramedics, regulators, employers and the public with information that can inform paramedic professional practice and education. This in turn can assist paramedics to protect both the patient and themselves, now and into the future.

References

1. In NSW complaints against paramedics can be made to and investigated by the Health Care Complaints Committee but workplace sanctions are still enforced by the employer.
2. HCPC UK 'Fitness to Practice' Annual Report 2013. http://www.hcpc-uk.org/assets/documents/100042D7Fitnesstopractiseannualreport2013.pdf
3. http://www.ahpra.gov.au/National-Boards.aspx
4. *Health Practitioner Regulation National Law (Queensland) (Qld) s 3A(2).*
5. Except in NSW where this is undertaken by the Health Professional Councils Authority and the Health Care Complaints Commission and in Queensland where this is undertaken by the Queensland Health Ombudsman from 1st July 2014.
6. *Hughes & Vale Pty Ltd v New South Wales* (No. 2)(1955) 93 CLR 127, Dixon, CJ, McTiernan and Webb JJ decided [at 156].
7. *Health Practitioner National Law Act 2009* (Qld) s5 (emphasis added).
8. Australian Health Ministers' Advisory Council Health Workforce Principal Committee, *Consultation paper Options for regulation of paramedics* (Department of Health, Western Australia, 2012).
9. Ibid, 60.
10. *Health Practitioner Regulation National Law Act 2009* (Qld) ss 140 and 141.
11. *Health Practitioner Regulation National Law Act 2009* (Qld) s 6.
12. Ibid s 5.
13. *HCPC Fitness to Practice Annual Report 2013.* http://www.hcpc-uk.org/assets/documents/100042D7Fitnesstopractiseannualreport2013.pdf
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15. For more details see *AHPRA and the National Boards Annual Report 2012-2013 at http://www.ahpra.gov.au/Publications/Corporate-publications.aspx.*
16. AHPRA Panel Decisions 2012-2013 http://www.ahpra.gov.au/Publications/Panel-Decisions.aspx
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