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WITS No.: 95176

Professor Ron Paterson
Chaperone Review
c/- National Health Practitioner Ombudsman and Privacy Commissioner

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Dear Professor Paterson

The Department of Health and Human Services welcomes the opportunity to make a submission to the Independent Review on the use of Chaperoning Conditions to Protect Patients (the Review).

This submission broadly responds to the terms of references of the Review and highlights particular issues that may be taken into consideration when forming future regulations for health practitioners that are being investigated for sexual misconduct. The comments made in this submission apply to the use of chaperoning conditions with regard to all registered health professionals.

While the use of chaperoning conditions appears to be a well-meaning regulatory mechanism, it may not always be the most effective or practical measure to protect patients or health practitioners. Tasmania supports adopting a flexible approach in responding to allegations of sexual misconduct by health practitioners. Chaperoning conditions should be one of several possible responses, alongside suspension or imposing other mandatory leave arrangements – noting that while protecting the public is the highest priority, the potential impact on the health practitioner of an as-yet unsubstantiated allegation should also be considered.

Issues concerning the Chaperone Protocol

The Australian Health Practitioner Regulation Agency's (AHPRA) Chaperone Protocol (the Protocol) notes that prior to any contact with the specified class of patients named in the restriction, the patient must be informed of the necessity for a chaperone to be present. Patients must also be made aware that chaperones will observe any contact between the health professional and the patient at all times. For chaperoning conditions to be effective in protecting patients, and to ensure patients have capacity to make an informed decision, it must be clearly communicated to the patient why a chaperone is required and what the patient's options are if they do not consent to a chaperone being present. Gaining consent requires patients to have capacity to make an informed decision which may be difficult in some instances.

Regulatory measures to protect patients while allegations of sexual misconduct by a health professional are being investigated must be in line with procedural fairness and natural justice principles. The use of chaperones may imply guilt, with potential negative consequences for the doctor's reputation – even if the allegations are unfounded.

Some organisations may find it difficult to comply with chaperoning guidelines, potentially diverting key resources away from other service delivery priorities.

Preferred approach for the Department of Health and Human Services/Tasmanian Health Service

The practice of chaperoning as currently outlined in AHPRA's Chaperone Protocol may not always be the most appropriate mechanism to respond to allegations of misconduct. For employees of the Department of Health and Human Services and Tasmanian Health Service, other options to protect patients (and health practitioners) include suspension of a health practitioner from patient care activities or the exploration of leave options (as occurs in other occupations where there are allegations of serious misconduct). It is further noted that as with any suspension, it is essential that the investigation process is undertaken promptly to prevent de-skilling of the health professional.

It is acknowledged that where these options may not be available (e.g. in the private sector or in situations of particular workforce shortage), it may be more appropriate to impose rigorous chaperone conditions.

I also note that the Tasmanian Health Service has a broader protocol regarding the general use of chaperoning for intimate examinations. This protocol complies with the AHPRA Protocol, in addition to providing guidance on issues beyond sexual misconduct allegations, such as gender-based issues, cultural diversity and sensitive medical interactions.

Regardless of any concerns with the practice of chaperoning, I support the role of the Medical Board of Australia as the appropriate committee to assess the need for immediate action and to place conditions on a medical practitioner.

Following the Review, Tasmania will provide ongoing input into any necessary changes to the Regulatory Principles for the National Scheme. Tasmania will also recommend what, if any legislative reforms should be considered by Ministers through its membership on the Council of Australian Governments' (COAG) Health Council and other relevant committees.

Thank you once again for the opportunity to provide a submission. I look forward to the findings of the review.

Yours sincerely



11 Oct 2016

Michael Ferguson MP

Minister for Health