

## Health Insights

# Putting the past behind you? Not any more, as Medical Board starts displaying links to old disciplinary decisions on the National Register

Australian medical practitioners are expressing understandable concern about the Medical Board of Australia's (MBA) recent decision to display links to published disciplinary decisions and court rulings on individual practitioner listings on the National Register (**Register**).

The MBA's decision effectively implements the final recommendation of Professor Ron Paterson's *Independent Report on the Use of Chaperones*, delivered in February 2017. In that report, Professor Paterson concluded (among other things) that the Register lacks transparency and in particular, demonstrates a paucity of easily accessible information regarding health practitioners' disciplinary histories: "*patients should not have to resort to Dr Google to find information about a doctor's previous disciplinary or criminal record for sexual misconduct.*"<sup>1</sup> To address these concerns, Professor Paterson recommended that the Register include "*web links to published disciplinary decisions and court rulings*".<sup>2</sup>

The MBA has stated that the newly displayed links provide access to tribunal and court decisions which are already publically published (for example on external case database websites such as 'AustLII'), but that links will not be displayed when suppression orders are in place<sup>3</sup>. No time limit for the display of these links has been proposed, and given the MBA's decision to apply the policy



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<sup>1</sup> "*Independent review of the use of chaperones to protect patients in Australia*", Commissioned by the Medical Board of Australia and the Australian Health Practitioner Regulation Agency, Report by Professor Ron Paterson, February 2017, page 10.

<sup>2</sup> Ibid.

<sup>3</sup> "*Register Changes improve consumer access to public information*", Media Release by the Medical Board of Australia, dated 26 March 2018.

retrospectively, it seems safe to assume the links will be displayed permanently. Medical practitioners who have been the subject of public disciplinary proceedings involving a tribunal or court can therefore expect the decision to be linked to their name on the National Register for the remainder of their careers.

By way of example, the links appear on the Register in the following way:

Reprimands:

[View definition of 'Reprimand'](#)

- On 13 February 2018, the Victorian Civil and Administrative Tribunal ordered that the Registrant be reprimanded.

Tribunal decision:

[View definition of 'Tribunal decision'](#)

13/02/2018

A Tribunal decision has been made about this practitioner [View the full Tribunal decision](#)

Tribunal decision:

[View definition of 'Tribunal decision'](#)

12/10/2017

A Tribunal decision has been made about this practitioner [View the full Tribunal decision](#)

As at the date of this article, links have been added to decisions dating back to February 2017, however over the coming year links will be added to decisions dating back to the start of the National Scheme in 2010, making this decision retrospective in operation.<sup>4</sup>

One of the key grievances associated with the change, is that decisions will be linked *even* where the allegations have been found not proven – ie, where the medical practitioner has been accused, but found *not guilty*, of misconduct. Further, where a practitioner has been found guilty of professional misconduct, but has satisfied or served out the relevant disciplinary consequences of that finding (be they conditions, a suspension etc), the link to the decision regarding their conduct will remain on the National Register forever. In effect, those practitioners who have been the subject of a tribunal or court decision will now be forced to “*live with the after-effects of complaints in virtual perpetuity*”<sup>5</sup>.

The other concern with the inclusion of these links is that the type of decisions displayed on practitioner registrations appear to go beyond the seemingly limited ambit of Professor Paterson’s original recommendation (being to publish sexual misconduct decisions). It appears that the MBA has resolved to make the policy universal, by displaying links to not only decisions considering allegations of sexual misconduct, but also to other tribunal and court decision concerning the practitioner (sexual or not). In fact, our recent ‘spot check’ of the Register has revealed that the MBA has also added links to tribunal decisions considering matters *other* than professional misconduct allegations (for example, one practitioner’s registration page provides the links to details of a hearing considering whether to grant a stay of the Board’s decision to suspend his registration, pending the hearing of an application to review an Immediate Action decision). This raises questions about what parameters the Medical Board is using to determine which tribunal or court decisions will be linked to the Register, or whether in fact all decisions (regardless of subject matter), are destined to be included.

<sup>4</sup> Ibid.

<sup>5</sup> O’Rourke, Geir. “AHPRA begins publically listing old complaints against doctors”, *Australian Doctor*, 28 May 2018.

We note for completeness that although the inclusion of these links on the Register currently only applies to medical practitioners, AHPRA has publicly supported the MBA's decision and indicated that it will be proposing a similar approach to the other National Boards.<sup>6</sup>

THIS ARTICLE WAS WRITTEN BY PRINCIPAL KELLIE DELL'ORO AND ASSOCIATE ANNA MARTIN. PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS OR IF YOU WOULD LIKE FURTHER INFORMATION.

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<sup>6</sup> AHPRA Professions Reference Group Communique, dated 28 February 2018.