

Health Insights

New powers used by Health Complaints Commissioner to stop unregistered service providers making false claims

The Victorian Health Complaints Commissioner (the Commissioner) can now issue general health warnings and ban unregistered service providers from treating patients, even before a complaint investigation is completed, if the Commissioner believes a health provider poses a serious danger to the public. A breach of the new General Code of Conduct¹ (the Code) for providers outside the National health practitioner registration scheme, can result in fines and up to two years imprisonment. It is now an offence for a health service provider to practice in Victoria if they are prohibited from doing so in any other State or Territory in Australia.

A recent complaint to the Commissioner illustrates the power of the Commissioner.

The complaint concerned a hypnotherapist and self-described healer, Mr Dennis Wayne Jensen and his treatment of a young woman, claiming he could cure cancer. The woman later died, having rejected conventional evidence-based treatment based on his advice.

On May 7, 2018, the Commissioner launched an investigation² of Mr Jensen following a complaint about Mr Jensen's claims to cure ovarian cancer with 'black salve'. Mr Jensen was alleged to have encouraged the person treated with the illegal black salve to stop all evidence-based treatment, including surgery.

In June 2018, the Commissioner issued a General Health Service Warning Statement³ that was deemed necessary to avoid an imminent and serious risk to the health safety or welfare of the public, and an Interim Prohibition Order,⁴ based upon the belief that Mr Jensen had contravened the Code, prohibiting him from:

1. Providing any general health service, paid or otherwise, in a clinical or non-clinical capacity.
2. Claiming or representing (including on any internet based forum or other social media) that he is qualified, able or willing to cure cancer or other terminal illnesses.
3. Supplying, promoting, recommending or making available to any person any product, therapy or other treatment, including but not limited to, black salve.

On 7 August 2018, following the Investigation, Mr Jensen was found to have contravened the Code, when he treated a person suffering from ovarian cancer with black salve and encouraged that person to stop evidence based treatment. A final Prohibition Order⁵ prohibited Mr Jensen from:

¹ Schedule 2- General Code of Conduct in respect of general health services, *Health Complaints Act 2016* (Vic).

² Part 4, *Health Complaints Act 2016* (Vic).

³ Section 87, *Health Complaints Act 2016* (Vic).

⁴ Section 90, *Health Complaints Act 2016* (Vic). A ban on practice for 12 weeks, while the Commissioner conducts an investigation.

⁵ Section 95, *Health Complaints Act 2016* (Vic).

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1. Providing any general health services to any person in a clinical or non-clinical capacity whether or not those services are paid for or provided free of charge;
2. Claiming or representing that he is qualified, able or willing to cure cancer or any other serious disease or illness; or
3. Supplying, promoting or recommending to any person any product, therapy or other treatment (including black salve) that he claims can cure or treat cancer or any other serious disease or illness.

It is highlighted that there was only a short period between the Interim Order and the final Order.

Mr Jensen continued treating patients, ignoring the published warnings naming him and the risks he posed to the public on the Commission's website and in a newspaper circulating throughout the State.⁶ The threat of significant penalties for breaching the Code and the practice ban, had not deterred Mr Jensen from treating patients.

On 18 January 2019, the Commissioner's further investigation found Mr Jensen had supplied alternative remedies such as black salve to a woman with ovarian cancer, and another cancer patient. A Prohibition Order against Mr Jensen stated that:-

1. the named general health service provider contravened the Code applying to a general health service, and
2. it is necessary to make this prohibition order to avoid a serious risk to the health, safety or welfare of the public.

The further Order prohibited Mr Jensen from importing, manufacturing, or compounding any product or substance that he (or anyone else) claims can cure or treat cancer or other serious disease or illness.

The *Health Complaints Act 2016 (Vic)* (The Act) sets up a new legal framework for handling and investigating and resolving complaints regarding all Victorian health services. In an important new step, the Commissioner can now act on complaints from anyone; not just patients and carers. The Commission has an 'own motion' power, to investigate an issue that could have formed the subject of a complaint, even when no complaint is made, such as media revelations of a provider making false or dangerous claims. Before conducting an investigation, the Commissioner must consult the President of the new Health Complaints Commissioner Advisory Council, who must be a lawyer, as part of a range of safeguards.

The Commissioner can still receive complaints about registered health service providers who are from one of the 14 health professions registered under the *Health Practitioner Regulation National Law 2009 (Vic)* (National Law) who can use a protected title.⁷ Importantly, practitioners deregistered under the National Law were not previously included, but are now covered in the Act. In a significant change, the Commissioner now regulates unregistered practitioners and 'general health service providers.' The term 'general health service' has widened to include any person or provider of a general health service, engaged in assessment, and attempts to provide treatment to improve a person's health including:-

- Private and public health service providers
- Registered and unregistered health service practitioners
- Individual practitioners and health service organisations (including deregistered practitioners)

⁶ Section 87(4), *Health Complaints Act 2016 (Vic)*.

⁷ The system operates alongside the National Boards which maintain responsibility for notifications of serious matters concerning conduct, competence or health of registered practitioners.

In the Act, a 'general health service provider'⁸ is an unregistered health provider not legally required to gain registration with the AHPRA, such as massage therapists, counsellors, nutritionists, homeopaths and naturopaths. This broad definition extends to palliative care, aged care, surgical or related service, prescribing or dispensing, provision of an aid or piece of equipment, health education, therapeutic counselling and psychotherapy, and even ancillary services including laundry, cleaning and catering services. The Act potentially applies to trainers, gym owners, pilates and yoga instructors who claim to improve health.

The General Code of Conduct contained in Schedule 2 of the *Health Complaints Act 2016* (Vic) sets standards for general health service providers. It also applies to registered providers operating outside their area of registration, for example a physiotherapist (a registered profession) providing reiki therapy (a general, or non-registered service).⁹

In October 2018, the Supreme Court of Victoria banned Mr Jensen from providing legal advice, appearing in Court or engaging in, or advertising himself as a legal practitioner, following accusations of impersonating a lawyer and representing clients in south eastern Victoria.

The option of a VCAT review of any decision of the Commission is one of the legislative safeguards. The new powers will only apply in response to health provider behaviour that poses significant risks to the health or safety of the public. They will have no impact on the vast majority of providers who act professionally and appropriately.

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⁸ Section 3, *Health Complaints Act 2016* (Vic).

⁹ www.hcc.vic.gov.au/healthcare-providers/general-providers.