

Health Insights

Professional Performance under the Spotlight | Inquiry into the actions of the regulator and local health districts

From 1999 onwards, Dr Emil Gayed worked in public and private hospitals across NSW. During that time, complaints and concerns were raised regarding Dr Gayed's professional practice and performance.

Dr Gayed was disqualified from practice following a Tribunal finding that Dr Gayed had engaged in numerous incidences of unsatisfactory professional conduct, and that together they had amounted to professional misconduct.¹ In March 2018, Dr Gayed surrendered his registration as a medical practitioner in Australia.

In late June 2018, the Medical Council of NSW (**the Council**) (formerly the Medical Board of NSW) appointed barrister Gail Furness SC, to conduct an Inquiry (**Medical Council Inquiry**),² to review the Council's approach to the management of complaints about Dr Gayed, in conjunction with the co-regulator, the Health Complaints Commission (**HCCC**). The review included an examination of the processes undertaken pursuant to Part 8 of the Health Practitioner Regulation National Law (NSW),³ in its response to concerns raised about the performance of Dr Emil Gayed.

At the same time, NSW Health appointed Gail Furness SC to undertake an independent inquiry into the processes of NSW Health (**Inquiry Part 2**)⁴ to review the actions of local health districts ("LHDs") (formally known as area health services) in managing and responding to complaints, adverse events and performance

¹ *Health Care Complaints Commission v Gayed* [2018] NSWCATOD 165.

² Gail Furness SC, 'Review of processes undertaken by the Medical Council of New South Wales pursuant to Part 8 of the Health Practitioner Regulation National Law (NSW)', 31 October 2018 at <https://www.mcnsw.org.au/medical-council-releases-final-report-gail-furness-sc-its-processes-respect-dr-emil-gayed>.

³ Part 8, Health performance and conduct, Sections 138-207.

⁴ Gail Furness SC, 'Review of documentary material in relation to the appointment of Dr Gayed, management of complaints about Dr Gayed and compliance with conditions imposed on Dr Gayed by local health districts.' 21 January 2019 at <https://www.health.nsw.gov.au/patients/inquiry/gayed/Pages/default.aspx>.

issues in relation to Dr Gayed. A Clinical Associate Professor of Obstetrics and Gynaecology was appointed to assist the Inquiry. The Medical Council Inquiry report was released in November 2018 and the Inquiry Part 2 report followed in January 2019.

The Medical Council Inquiry identified several issues with the regulation, oversight and reporting requirements for medical practitioners on whom registration conditions had been placed, such as Dr Gayed. Three main issues emerged.

The first concerned the powers, policy and practice of information sharing between the Medical Council, and public and private hospitals. For example, recommendations by a Medical Council Professional Standards Inquiry (“PSI”) had not been consistently followed or communicated to Dr Gayed’s employers. The second issue was the management of complaints against Dr Gayed in the Medical Council Performance Assessment Program and the way in which performance assessments were conducted.

Particular shortcomings of the current system were identified in the Medical Council Inquiry as:

- a) the absence of an employer obligation to notify the regulator of a decision to restrict or withdraw privileges,
- b) the absence of a practitioner obligation to notify a private hospital of a finding of unsatisfactory professional conduct with respect to a public health organisation,
- c) the absence of a requirement of the Council to notify employers of certain matters, such as a decision to suspend a medical practitioner,
- d) limited documentation of the reasons for decisions of disciplinary bodies, or timelines and process for performance review of medical practitioners.

Ms Furness recommended that while the current law does not expressly allow the Council to provide information to employers or accreditors about a doctor’s compliance with conditions on registration, her belief was that it should be expressly permitted.⁵ In her view, information regarding conditions on a medical practitioner’s registration is relevant in order to enable proper supervision of a practitioner whose registration is conditional.

⁵ Above n 2, 9, para [25].

In response to the findings, the President of the Medical Council stated:-

‘The Council acknowledges that the response of health regulators to numerous complaints about Dr Gayed did not prevent his substandard professional performance for several years. Aspects of his management by the Medical Board, and later the Council, were unsatisfactory.’⁶

Inquiry Part 2 highlighted issues for attention by the LHDs including the limited availability of clinical information, monitoring and oversight of care of private patients undergoing procedures in public hospitals by Visiting Medical Officers, such as Dr Gayed. Significant limitations existed in the use and capacity for the clinical incident monitoring system to detect patterns and identify clinical problems, and individual practitioner issues.⁷ Concerns had been raised by nursing staff, anaesthetists, other medical practitioners and patients themselves, in particular at Manning Hospital, Taree where Dr Gayed worked from 1999 to 2016.

Ms Furness found that of most concern ‘was a repeated theme of the unnecessary removal of organs, unnecessary or wrong procedures, perforations of organs and reluctance to transfer to tertiary facilities’ that could offer greater expertise and clinical supports.⁸

Inquiry Part 2 recommended :-

- 1) governance processes of one of the NSW LHD be reviewed to ensure that clinical incident reports are monitored at a LHD level,
- 2) public hospitals which have arrangements with Visiting Medical Officers to perform procedures on private patients should establish mechanisms to ensure access to information about those patients to be satisfied that the procedures are performed to an appropriate standard,
- 3) LHDs, particularly those in regional and remote areas, ensure there is external oversight of the performance of medical practitioners providing specialist services.

The Council noted the importance of prompt, relevant action in response to a finding of unsatisfactory performance by medical practitioners, adding that Ms Furness’ recommendations are a valuable contribution to the revision of the Medical Practitioner Performance Program, which is currently underway.

⁶ Above n 2, Introduction- Message from the President, Medical Council Inquiry.

⁷ Above n 4, 221-223, para 1252].

⁸ Above, n 4, 221, para [1248].

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