16 February 2015

Mr Leon Atkinson-MacEwen

Health Ombudsman

Office of the Health Ombudsman

PO Box 13281 George Street

BRISBANE QLD 4003

Dear Mr Atkinson-MacEwen

**Case review of managing practitioner compliance with conditions of registration**

Thank you for your letter dated 13 January 2015 enclosing the draft report dated December 2014 in relation to the monitoring and compliance of conditions on a practitioner’s registration by the Australian Health Practitioner Regulation Agency (AHPRA) and the Medical Board of Australia (the Board). AHPRA and the Board appreciate the opportunity provided to respond to the report and the recommendations made in it.

I have consulted with both the local Manager, Compliance (Helen Rays) in the Queensland office as well as the National Director, Compliance (Jim O’Dempsey) in preparing this response. Both Helen and Jim have been appointed to these roles since July / August 2014, as part of both a local and national plan to improve the monitoring and compliance program within the national scheme.

Collectively, we would welcome the opportunity to discuss our response with you.

**Recommendation 1**

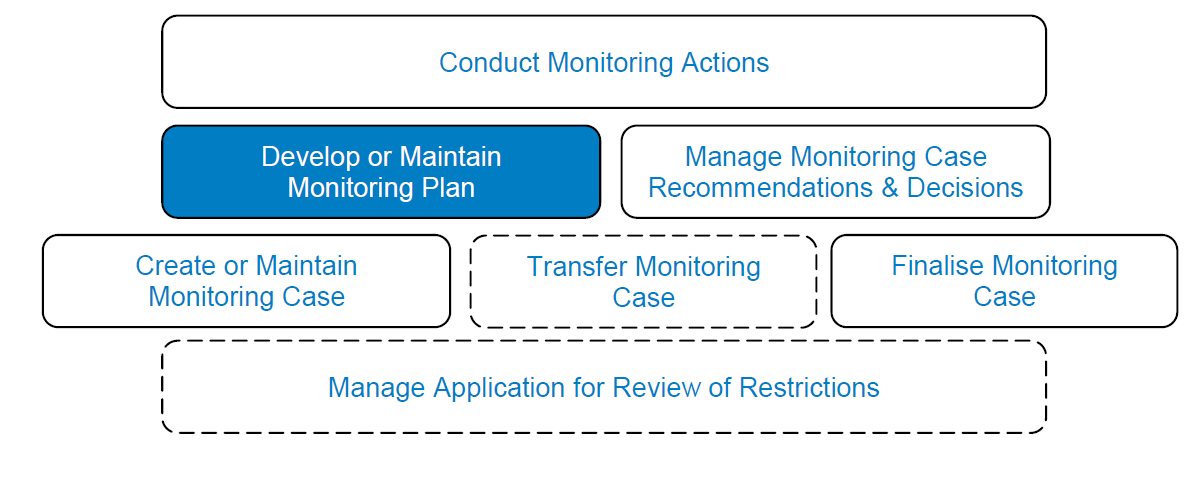
AHPRA develop and document a clear, detailed compliance monitoring plan for each practitioner that has conditions imposed on their registration. Where practicable, this plan is developed in association with the development of the conditions to be applied to the practitioner’s registration.

**AHPRA Response**

In November 2013 AHPRA deployed the monitoring module within Pivotal (registrant management software) following approximately six months of development. That deployment included the publication of the Monitoring and Compliance Procedure Manual (the manual) and a national training program for all compliance case officers.

The manual deals with all stages in the monitoring and compliance process including the development and maintenance of the monitoring plan as detailed in the following diagram.

Diagram 1: Stages in Monitoring and Compliance



Since introduction of the module and the manual, all practitioners with registration restrictions (conditions and undertakings) in Queensland have had a monitoring plan developed and maintained. The monitoring plan serves multiple purposes, including:

* defining the activities that are to be performed to monitor each restriction
* establishing when these activities will occur
* outlining what information is expected to be received and
* communicating to the registrant and other involved parties their responsibilities with respect to the restrictions.

The aim of the plan is to ensure that each restriction is appropriately monitored and that the expectations for specific events such as reports are set and understood by all parties.

Compliance staff are required to be consulted to inform the development of restrictions being recommended to decision makers to ensure the form of the restrictions enables effective monitoring. This cannot always be achieved given the nature of independence in decision making by Committees, Boards, Panels and Tribunals.

To address this issue AHPRA has under development a national restrictions library which will be available for use in the development of recommendations and by decision makers in determining the form of a restriction. The library will supplement and replace the state based bank of conditions that exist in Queensland. In this regard the library will contain restrictions that have been developed and tested and are:

* fit for purpose – compliance with the restrictions will ensure that health services are provided safely and are of an appropriate quality
* clearly defined – not ambiguous or open to interpretation and a breach of restrictions can be readily identified and
* able to be monitored – provide for the gathering of sufficient information in order to determine the level of compliance by the health practitioner or student.

I note that the National Director, Compliance has met with you and committed to consult with your office in the development of the library.

**Recommendation 2**

AHPRA provide the practitioner with a documented compliance plan at the commencement of monitoring that clearly states:

* the conditions imposed on the practitioner’s registration
* the methods and data that will be used to monitor and assess compliance with each of the conditions (including the rationale for each)
* reporting requirements, including the format, content and specific due dates for any self-reported compliance data, including if these are one-off or ongoing requirements
* processes for communication by the practitioner to AHPRA of routine self-reported compliance data and any immediate reporting of significant monitoring issues
* the frequency of assessment of compliance
* a description of actions that would constitute non-compliance with a condition
* a description of responses to non-compliance, including likely or actual penalties for breaches, relative to their severity
* that adjustments to the monitoring plan may occur in response to any changes in the level of risk and, if this does occur, it will be communicated to the practitioner.

**AHPRA Response**

Practitioners are as a matter of course sent an initial monitoring letter. This was reviewed in August 2014 and now is a far more structured document that articulates the practitioner requirements separated by restriction category and includes a copy of the schedule of restrictions.

Information sheets are also sent relating to high risk restriction categories that include information in relation to what may ensue if a breach of restrictions or a failure to provide monitoring information occurs. This includes the restriction categories of chaperonage, supervision and restrictions not to practice. These information sheets which are placed at Attachment A 1-3 were implemented in August 2014 and are sent with the notice of decision.

AHPRA will review the initial monitoring correspondence to implement further changes including:

* the methods and data that will be used to monitor and assess compliance with each of the restrictions (including the rationale for each)
* a description of the actions that would constitute non-compliance with a restriction based on the nationally agreed critical compliance events detailed in Attachment B, and
* more detail about the potential outcomes for a breach of a core restriction vs an operating restriction and a technical vs a substantive breach of the restriction.

AHPRA would also be interested in exploring with you the development of a matrix to address Recommendations 2(f) and (g). In developing such a matrix we will need to ensure that we achieve the correct balance between a tool which informs decision makers and the practitioner subject to the restrictions and which does not inappropriately fetter the discretion of independent decision makers under the National Law.

May I suggest that the National Director, Compliance and the Manager, Compliance (Queensland) work with a nominated officer(s) from your office to progress this development?

**Recommendation 3**

AHPRA work with Medicare to establish processes that provide AHPRA with more timely access to data for compliance monitoring purposes.

**AHPRA Response**

AHPRA welcomes your recommendation in this regard and notes that in June 2014 the CEO formally requested assistance from the Department of Human Services (DHS) for access to Medicare data. A copy of that correspondence is placed at Attachment C. Two lines of action have been progressed by DHS and AHPRA following this formal request, as follows:

* development of a formal data exchange agreement has been progressed and
* negotiations for the classes of data to be accessed, the timeframes for responses and an escalation process were initiated for both compliance and investigation purposes.

Formal Data Exchange Agreement

AHPRA has settled a Data Exchange Agreement in the form of a deed with DHS. Section 3.2 of the deed provides for provision of data to AHPRA as follows:

## Provision of data by Human Services to AHPRA

### *AHPRA’s Data Officer may request from Human Services’ Data Officer the data sets for information relevant to the investigation and monitoring of health practitioners as set out in Table B of Schedule 1. Upon receipt of a request, Human Services' Data Officer will implement Human Services' usual processes in relation to actioning and approving the release of such information.*

### *Human Services will provide the data sets requested within the timeframes specified in Table B of Schedule 1, provided that the disclosure is authorised by the National Law and is not prohibited by any Commonwealth secrecy or privacy laws.*

### *This data will be provided through email, hard disk, or removable drive, depending on the volume of the data and the security requirements applicable to the data.*

### *If Human Services, acting reasonably with regard to the nature and extent of the information, is not able to provide the requested data within the timeframes specified in Table B of Schedule 1, Human Services must promptly notify AHPRA and propose an alternative delivery date.*

Through the governance group established under the Deed, AHPRA is negotiating the provision of data on the basis of the following priorities:

* Critical – Where there is an immediate threat, contact can be made by phone to the Information Release contact officer by the AHPRA Officer to request an immediate response
* High – Response will be provided by Information Release within five working hours
* Priority – Response will be provided by Information Release within 10 working days
* Routine – Response will be provided by Information Release within 30 working days with the exception of requests for PBS scripts and older than five year data which may take longer.
* Critical and High requests should only be used in emergency situations where AHPRA intends to take action within 48 hours of receiving the information. Generally these categories are used for imminent threats to children or other individuals.
* Due to the time required to retrieve customer data, requests for PBS scripts or older than five year data will only be treated as Routine.

Alternate Data Source

Given the time it has taken to gain clear agreement from DHS, use of an alternate data source is being investigated involving accessing Medicare claims data direct from medical practices. If confirmed as viable, this method of data collection will be introduced as a standard compliance tool for medical practitioners as soon as possible. In this regard the Director, Provider Eligibility & Accreditation, DHS has advised that:

* the Health Insurance Act requires practitioners to maintain all records submitted as claims to Medicare for a minimum of two years and a maximum of seven years, and
* these records must be kept in such a way that they can be reproduced in their original form.

Legal advice in addition to formal advice from DHS has been sought to confirm these requirements and subject to that advice a standard registration restriction will be developed requiring access to Medicare claims data maintained by the practice for the purposes of the Health Insurance Act. This standard restriction will be recommended for all new matters and to update any current restrictions requiring access to Medicare data.

Queensland has initiated local policy for monitoring chaperone restrictions which now require the provision of practice billing data and includes an early reconciliation of this data against the chaperone log. On receipt of

the Medicare data a reconciliation of this with the chaperone log is also completed.

**Recommendation 4**

AHPRA develop and adopt a clear, risk-based compliance monitoring framework that provides a consistent set of principles and directions on:

* undertaking risk assessments of monitoring cases
* the choice of monitoring methods and activities, including the data that will be used to monitor specific conditions by categories of conditions
* the frequency and extent of monitoring activity by categories of conditions.

**AHPRA Response**

The National Director, Compliance is responsible to progress policy, procedure, innovation and effective reporting in this functional area of regulation. An overarching strategy for the compliance function strongly anchored in risk management has been developed and endorsed. This strategy is as follows:

*The role of AHPRA’s compliance function is, on behalf of the National Boards, to monitor health practitioners and students with imposed registration restrictions or where their registration has been suspended or cancelled. This role is consistent with the requirements of the National Law (links to Regulatory Principle 1).*

*The purpose of monitoring health practitioners and students is to manage risk and protect the public by regularly confirming they are complying (or identifying non-compliance) with the restrictions which are designed to ensure they continue to provide health services safely and of an appropriate quality. In the case of suspensions and cancellations it is to confirm that the health practitioner has ceased practising the profession or that the student has ceased clinical practice (links to Regulatory Principles 2&3).*

*The compliance function is not therapeutic, rehabilitative or pastoral in nature.  Compliance staff support health practitioners and students in complying with registration restrictions, however it is ultimately the individual health practitioner’s or student’s responsibility to ensure they comply.*

*On identifying potential or actual non-compliance compliance staff will assess the risk that this presents and respond in ways that are proportionate to manage the risk and protect the public, including any required escalation to a National Board (links to Regulatory Principles 5&6).*

With this overarching strategy in place AHPRA has an extensive policy development agenda by category of restrictions. The contents of the policy framework are detailed in Attachment D. Each policy developed will include:

* the monitoring methods and activities to be undertaken, including the data that will be used to monitor specific restrictions and
* the frequency and extent of monitoring activities to be undertaken.

I note that the National Director, Compliance has met with you and committed to consult with your office in the development of each policy.

AHPRA is also well advanced in the development of Compliance Key Performance Indicators (KPIs) and a risk based reporting framework. To ensure that Compliance KPIs have an emphasis on risk management as well as on measures of efficiency and timeliness the KPIs have been closely integrated with risk based monthly reporting.

Four key KPIs have been endorsed nationally as the key measures of performance. In summary these KPIs measure performance in:

* completing the initial assessment of compliance risk profile
* completing the monitoring plan
* completing updates of compliance status for conduct , performance and health monitoring cases:
* upon receipt of scheduled reports or information
* if scheduled reports or information become overdue
* upon receipt of ad-hoc reports or information, and
* no less frequently than once per month, and
* completing updates of compliance status for suitability/eligibility monitoring cases:
* upon receipt of scheduled reports or information
* if scheduled reports or information become overdue
* upon receipt of ad-hoc reports or information, and
* no less frequently than once per quarter.

Risk based reporting is anchored in the concept of ‘critical compliance events’ which if occurring may result in the public being exposed to the risk that the registration restrictions were designed to prevent. Introducing this concept is necessary to ensure nuanced reporting that is not overwhelmed by the ‘noise’ of low level or technical non-compliance. The critical compliance events are detailed in Attachment B.

There are several steps in risk based reporting to enable values to be applied which can then be extracted for reporting purposes. These steps are detailed in Attachment E and the monthly reports (including year to date comparative data when available) which are proposed are as follows:

* Total number of registrants x state in compliance monitoring x restriction category x risk type
* Total number of new registrants x state entering compliance in the period x restriction category x risk type
* Total Number of registrants compliant with critical compliance events x state x restriction category x risk type
* Total number of registrants suspected of non-compliance with critical compliance events x restriction category of suspected non-compliance x form of suspected non-compliance x individual practitioner x follow-up actions x recommendations made to or decision of delegate (whichever is available at the time of reporting) x risk type
* Total number of registrants confirmed as non-compliant with critical compliance events x individual practitioner x restriction category of non-compliance x form of non-compliance x follow-up actions x recommendations made to or decision of delegate (whichever is available at the time of reporting) x risk type

The reports for deployment of the risk based reporting framework are currently being tested with the objective of implementation from April 2015. Implementation will be supported by a national training program for compliance staff.

In the interim, Queensland has implemented local policies on high risk restriction categories including chaperone restrictions that provide a minimum expectation of monitoring officers and the expected activity if there is a suspected breach.

In addition Queensland has implemented compliance status reporting from July 2014 for medical practitioners and from October 2014 for nurses, midwives, dentists and psychologists.

**Recommendation 5**

AHPRA’s compliance monitoring framework ensures that:

* self-reported data is assessed at intervals that allow for the early identification of non-compliance
* independent data for verification of the accuracy of self-reported data is obtained and assessed at intervals that allow for early identification of non-compliance.

**AHPRA Response**

The KPI and risk based reporting framework will require compliance status reviews to be undertaken at least monthly for conduct, health and performance restrictions and quarterly for restrictions related to suitability/eligibility. Suitability/eligibility cases are only updated on receipt of information raising issues of non- compliance or quarterly as:

* these restrictions relate to issues such as English language competence, lack of recency of practice or because an applicant did not fully meet a requirement of an approved registration standard for a profession
* the restrictions usually require the registrant to fulfil requirements over a longer period with reporting also being over longer periods (for example: 788 Chinese Medicine Practitioners with English language conditions who are monitored annually) and
* it enables appropriate use of resources in updating compliance assessments quarterly while continuing to be responsive to, and reporting, issues of non-compliance when they occur.

Each compliance policy developed will identify the independent data sources to be utilised in monitoring the restriction and assessment will be required consistent with KPI requirements detailed above.

As mentioned above in the interim, Queensland has implemented local policies on high risk restriction categories including chaperone restrictions that provide a minimum expectation of monitoring officers and the expected activity if there is a suspected breach.

In addition, Queensland has implemented compliance status updates reporting from July 2014 for medical practitioners and from October 2014 for nurses, midwives, dentists and psychologists to ensure more timely reporting of concerns to delegates of the National Boards.

**Recommendation 6**

AHPRA review their processes for counting and categorising breaches of conditions to ensure more accurate measurement and reporting of the extent and nature of any non-compliance.

**AHPRA Response**

AHPRA has an ongoing program of work in this area.

In Queensland (since July 2014 for medicine and October 2014 for other professions) each of the local decision makers receives compliance status updates at each of their meetings. These updates provide an overall picture of compliance and monitoring cases, listed as either non-compliant, suspected non-compliant, pending compliance (where information is pending but still within the required timeframe) and compliant. These updates enable at-a-glance reporting of the overall compliance picture and measurement of the current status of the compliance program in Queensland.

In September 2013, AHPRA implemented templates for agenda papers and compliance audit table, which assists compliance officers to document occasions and categories of potential breaches to then report to Boards and Committees. The compliance audit table lists all of the practitioners with restrictions and associated analysis and commentary on the practitioner’s compliance and/or non-compliance.

As part of the implementation of this template, the compliance officer is also required to conduct regular reviews of each practitioner’s file including upon each occasion of receipt of evidence (or non-receipt of evidence). These templates have assisted in reporting to Boards and their delegates on the extent and nature of any non-compliance.

Clearly delineating critical compliance events into technical and substantive breaches will assist in more accurate measurement and reporting of the extent and nature of any non-compliance. This work aligns within Recommendation 7 below around adopting a hierarchy approach for categories of non-compliance and we welcome the opportunity to explore this with you further.

**Recommendation 7**

AHPRA adopt a clear, transparent pyramid approach to regulating compliance that clearly outlines the hierarchy of responses from least restrictive to most restrictive for particular categories of non-compliance.

**AHPRA Response**

AHPRA would also be interested in exploring with you the development such a pyramid as the basis of the matrix discussed in Recommendations 2(f) and (g). In developing such a pyramid, I note that we will need to ensure that we achieve the correct balance between a tool which informs decision makers and the practitioner subject to the restrictions, but which does not inappropriately fetter the discretion of independent decision makers under the National Law.

Can I suggest that the National Director, Compliance and the Manager, Compliance (Queensland) work with a nominated officer(s) from your office to progress this development?

In the interim, since the implementation of the *Health Ombudsman Act*, AHPRA and the Boards routinely advise your office of breaches of conditions that would meet the threshold for professional misconduct or where another ground for suspension or cancellation exists and we look forward to working with you ensure a common understanding of thresholds in this regard.

**Recommendation 8**

AHPRA outline in their hierarchy of responses clear sanctions for the late submission and non-submission of self-reported compliance data by the practitioner.

**AHPRA Response**

See response to Recommendations 2 and 7.

**Recommendation 9**

AHPRA and the QBMBA, including its committees, consider changes to decision making processes to streamline decision making, including establishing timelines.

**AHPRA Response**

In response to Recommendation 5, I noted that Queensland has implemented compliance status updates reporting from July 2014 for medical practitioners and from October 2014 for nurses, midwives, dentists and psychologists to ensure timelier reporting of concerns to delegates of the National Boards.

We continue to work closely with the QBMBA to refine those reports and to ensure more timely reporting of concerns to delegates.

Significant changes have been made to the structure of the committees of the QBMBA also. Monitoring and compliance reporting has traditionally been dealt with only by the Board. On the basis of this recommendation, I propose to work with the Notification Committees of the QBMBA to ensure they have appropriate delegations to take on primary responsibility for dealing with concerns about monitoring and compliance activities. AHPRA is also reviewing the structure of our compliance team in Queensland to ensure that we have the most appropriate mix of officers and a more streamlined escalation process for high-risk matters or concerns about non-compliance.

**Recommendation 10**

Decisions by AHPRA and the QBMBA to take no further action in response to non-compliance with conditions are accompanied by clear documented reasons for the decision and a plan to manage any outstanding risk associated with continuing non-compliance.

**AHPRA Response**

Noted. AHPRA and the Boards in Queensland have embarked on significant activity to improve the detailing of decisions and actions over the past 18 months. While this has not been limited to matters relating to non-compliance, I believe that it has had a significant effect in this area.

I believe the work that we propose to engage on in response to earlier recommendations will assist in clearly articulating the basis for managing risks associated with further non-compliance in cases where no further action is taken in relation to a specific breach.

Thank you once again for the opportunity to review and comment on your report. I look forward to working closely with you to ensure the work undertaken in response to your recommendations is satisfactory.

Yours sincerely

Matthew Hardy

State Manager, Queensland

Enclosures:

Attachment A: 1 Practitioner information sheet - Supervision

2 Practitioner information sheet - Restrictions not to Practice

3 Practitioner information sheet - Chaperone

Attachment B: Critical Compliance Events

Attachment C: Request for assistance from the Department of Human Services (DHS) for access to Medicare data dated 24 June 2014

Attachment D: Contents National Compliance Monitoring Policy

Attachment E: Risk Based Reporting