



PERFORMANCE INTERVIEW REPORTS POSITION STATEMENT

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Summary: Following a Performance Interview, a report is provided to the Performance Committee in order to consider the recommendations arising from the interview. Given the nature of the Interview and the confidential information that is at times included in the report, the Council's position is that such reports should not ordinarily be released to the complainant.

Instead the complainant will be advised that the practitioner has been interviewed and wherever possible, be provided with information concerning the outcome of the interview and some limited information about the interview.

Applies to: Performance Interview Panellists and the Performance Committee

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Relevant legislation:

- *Health Practitioner Regulation National Law (NSW)*
- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Health Records and Information Privacy Act 2002 (NSW)*

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PURPOSE

A Performance Interview is an informal interview. The interview report is likely to include personal information about the medical practitioner and may, on occasions, include other issues which were not raised in the triggering complaint.

The Medical Council of NSW (the Council) has considered whether the report should be provided to the person who made the complaint that initiated the Performance Interview.

The Council is mindful of its obligation to maintain confidentiality in relation to certain information provided by a medical practitioner and the expectations of complainants to be informed of the outcome of their complaint and the reasons for it.

BACKGROUND

A Performance Interview is one of the mechanisms developed by the Council, through its Performance Committee, to explore the issues raised in a complaint. The Interview enables the Council to obtain further information in order to assist it when deciding if the practitioner should be referred for a Performance Assessment. The Interview also assists the Council to decide whether any other courses of action are appropriate.

A practitioner's attendance at a Performance Interview is voluntary. Many interview reports include information about the practitioner's practice and personal situation, including discussion about the practitioner's health. This information extends beyond the content and issues raised in the complaint that initiated the Interview.

The Performance Interview report informs the Council as to the issues raised and the recommendations made by the Panel members who conducted the Interview.

The Performance Committee has previously resolved that if a Performance Interview resulted in the Council deciding to refer a practitioner for a Performance Assessment, the interview report would not be released to the complainant. However, if the Council determined that no further action was required, it would usually release the report to the complainant, unless there was a reason not to release it, (such as if the complainant was a third party or the report included confidential information about the medical practitioner). This position statement reconsiders that approach.

ISSUES CONSIDERED

Performance Interviews are an informal discussion with the medical practitioner. The report will often include details about the medical practitioner's health, professional and personal circumstances. The inclusion of such information assists the Performance Committee in its decision concerning what, if any, further action is necessary in response to the complaint.

A medical practitioner's candour at a Performance Interview is encouraged and assists in the successful management of matters through the Council's Performance Program. However this may be eroded if the Performance Interview report is provided to the complainant,

particularly as the Performance Interview is voluntary, it is not recorded, and the practitioner is not given an opportunity to provide comments or corrections to the report, prior to it being considered by the Council's Performance Committee.

The Council has considered that on the one hand, release of Performance Interview reports may result in the Council being in breach of its legislative obligations. The Council notes that it is not lawful for it to disclose a medical practitioner's health or personal information, whether to complainants or anyone else, unless exceptions to the confidentiality and privacy obligations apply as set out in the *Health Practitioner Regulation National Law (NSW)*, the *Privacy and Personal Information Protection Act 1998 (NSW)* and the *Health Records and Information Privacy Act 2002 (NSW)*.

On the other hand, the Council also has an obligation to be transparent about its processes and its decision-making which centres upon ensuring public protection. Complainants have expectations that they will be informed as to the management of their complaint and the outcome.

The Council has considered whether it should seek the medical practitioner's consent to release a Performance Interview report to the complainant. Alternatively, the Council could in advance advise the medical practitioner that the Interview report is likely to be released and seek consent prior to the practitioner attending the Performance Interview. However, this is likely to erode a practitioner's candour during the Interview and potentially limit the effectiveness of the Interview.

The Council has also considered whether it could provide a redacted report to complainants with the confidential information removed. Issues in relation to the practitioner's practice which are not directly relevant to the matters complained about would also have to be redacted. It is likely that large sections of the report would be removed, rendering it difficult to read and interpret and possibly eroding a complainant's confidence in the transparency and fairness of the Council's processes.

COUNCIL POSITION

Having considered these issues, the Council is of the view that following a Performance Interview, a complainant should be advised by letter that:

1. An interview has taken place and the date of the interview.
2. The issues of concern raised by the complaint were fully explored with the medical practitioner during the interview.
3. Following the interview, the Performance Committee has determined that:
 - i. No further action under the *Health Practitioner Regulation National Law (NSW)* is required.
The reasons for this decision may include the following:
 - a. The medical practitioner has been counselled by the Council.
 - b. That the Council understands the medical practitioner has now changed (or has undertaken to change) aspects of his/her practice.
 - c. That having considered the issues raised in the complaint and the medical practitioner's response, the Council is satisfied that no further action is necessary.
 - or
 - ii. There will be no further action taken about the initial complaint and the Council's consideration of this complaint is finalised. However as a result of the Performance Interview, the medical practitioner's professional

performance will be assessed in accordance with the provisions of the *Health Practitioner Regulation National Law (NSW)* (the Law). The Council is unable to disclose further information about this due to the confidentiality requirements contained within the Law. It is possible that conditions may eventually be imposed on the practitioner's registration, and if so, these will appear on the public online register available through the Australian Health Practitioner Regulation Agency website.

or

iii.

There will be no further action taken about the initial complaint and the Council's consideration of this complaint is finalised. However as a result of the Performance Interview, the Council is considering other matters which cannot be disclosed due to the confidentiality requirements contained within the Law. It is possible that conditions may eventually be imposed on the practitioner's registration, and if so, these will appear on the public online register available through the Australian Health Practitioner Regulation Agency website.

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