

Addressing Practitioner Performance Issues – A NSW Perspective

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Co-Regulation in NSW

- NSW opted out of the regulatory part of the national scheme
- The Medical Council of NSW is responsible for the regulation of medical practitioners under Part 8 of the *Health Practitioner Regulation National Law (NSW) No 86a* by managing notifications (complaints) through a conduct, performance or health pathway
- Registration decisions are made by the Medical Board of Australia through its State Board
- NSW has preserved the co-regulatory environment that was in place prior to the commencement of the scheme
- The Health Care Complaints Commission (HCCC) continues to investigate and prosecute serious complaints against medical practitioners before disciplinary bodies

Assessment of Complaints

- The Council and the HCCC meet and assess each notification in order to see if agreement can be reached as to the appropriate pathway for dealing with the notification
- During the preliminary assessment stage, information is obtained including the practitioner's response or clinical records, in order to assist the decision-making. More often than not, a preliminary opinion is obtained from a peer/expert which helps inform the assessment process
- This leads to the appropriate referral of matters, for example, evidence of a possible impairment or performance concerns being identified and referred for management

Why Performance?

- Practitioners who come to the attention of regulatory authorities because of issues relating to their professionalism (competence, performance or behaviour) are managed through a variety of interventions
- Historical approach is through disciplinary action focusing on the particular notification
- However disciplinary action is limited to looking at the notification and the investigation can only focus on the matters complained about by the complainant
- There is little scope to assess more broadly the practitioner's fitness to practice, even if the notification is the 'tip of a large professional iceberg'

Why Performance?

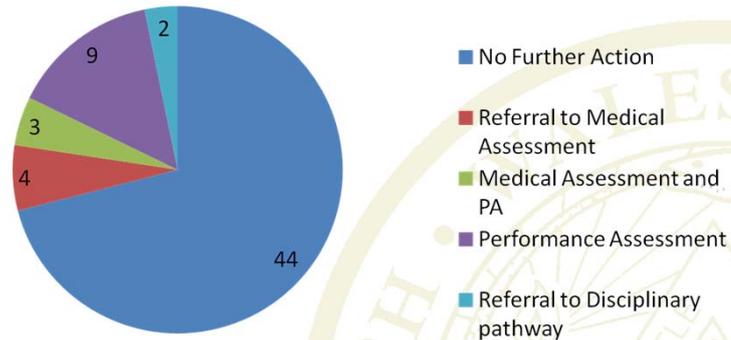
- The approach in NSW has been to apply filters to assess when a matter should be investigated
- 'Disciplinary Markers' are used so that investigation and prosecution are limited to matters where the practitioner has engaged in unethical, reckless, criminal or wilful behaviour in either clinical or non-clinical domains
- If a notification is devoid of the characteristics that would indicate that investigation is warranted, then a non-disciplinary measure should be used.
- A Performance Assessment focuses on a practitioner's fitness to practise
- Performance Assessment is not punitive, leads to earlier intervention / remediation and is broad based
- Performance matters usually led to an outcome of restrictions, supervision or retraining thereby advancing public protection

Performance in NSW - 2011/12

- In 2011/12 financial year, 235 notifications were referred to the Council to manage through its performance program
- The Council uses a variety of assessment tools which assist it in triaging and filtering the performance notifications
- One tool is a performance interview, where the issues raised in the notification can be explored and further information about the practitioner's practice and personal situation can be explored
- In 2011/12 financial year, the Council conducted 69 performance interviews (compared to 25 in 2010/11)

Performance in NSW - 2011/12

- Performance Interview Outcomes in 2011/12 (n=62 practitioners):

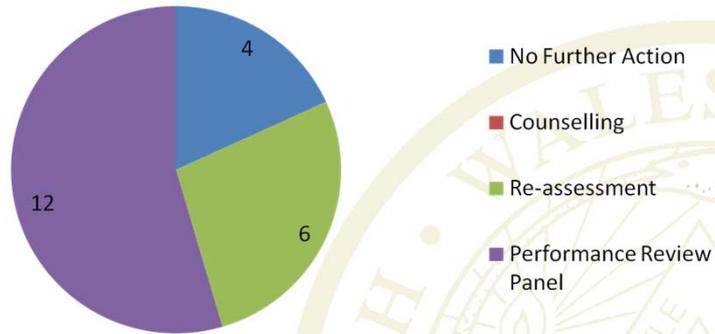


Performance in NSW in 2011/12

- In 2011/12 financial year, the Council decided that a PA should be conducted on 25 practitioners
- In the majority of cases, a decision to conduct a PA is based on a number of factors including the triggering complaint, complaint history, the recommendations following performance interview or involvement in another process. It could however be based on the triggering complaint alone

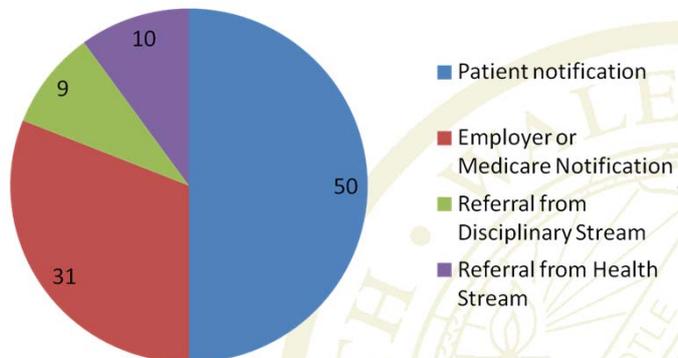
Performance in NSW in 2011/12

- PA outcomes in 2011/12 (n=22)



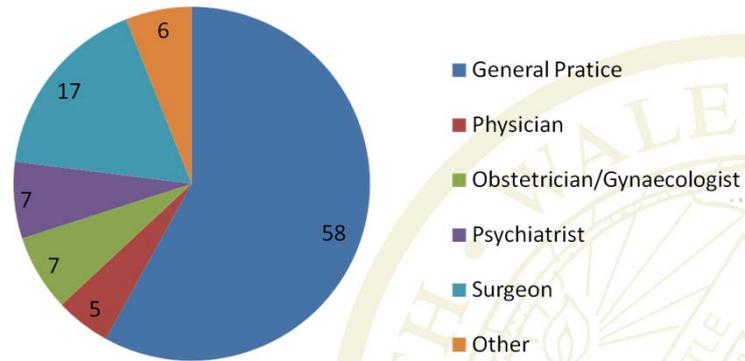
Analysis of all PAs in NSW

- Source of matters resulting in a PA (n=100)



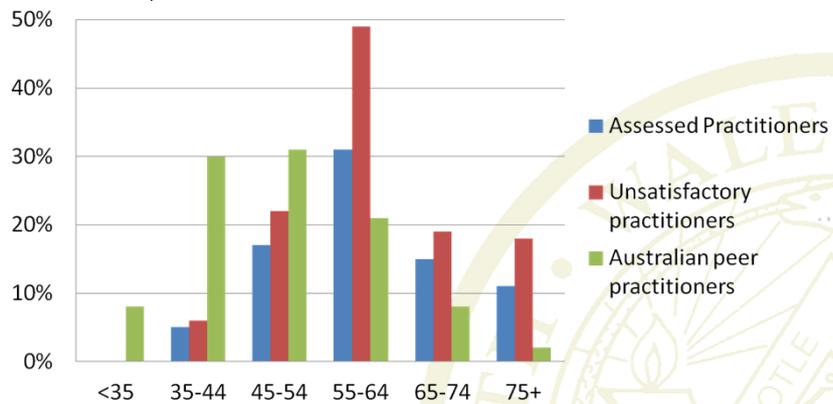
Analysis of all PAs in NSW

- Practice Area resulting in a PA (n=100)



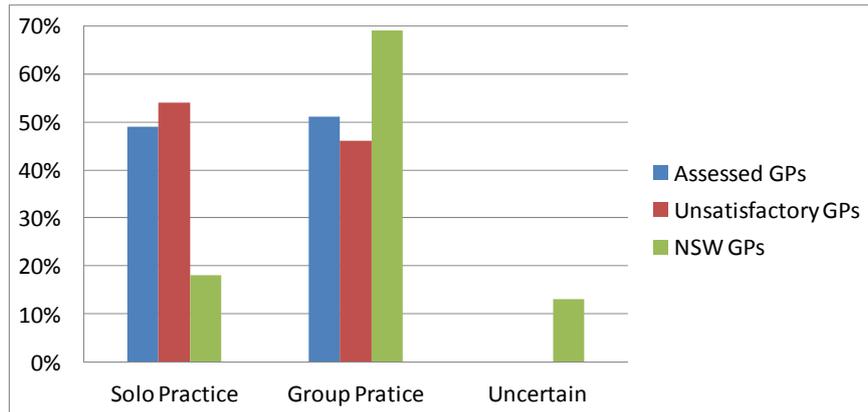
Analysis of all PAs in NSW

- Age Group: assessed (100) and unsatisfactory (70) practitioners compared with NSW practitioners



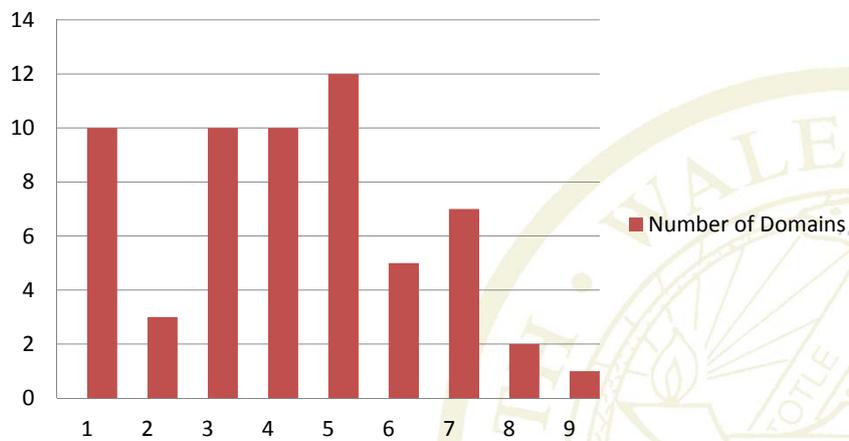
Analysis of all PAs in NSW

- General Practice type: assessed (67) and unsatisfactory (48) General Practitioners compared with proportion of NSW General Practitioners



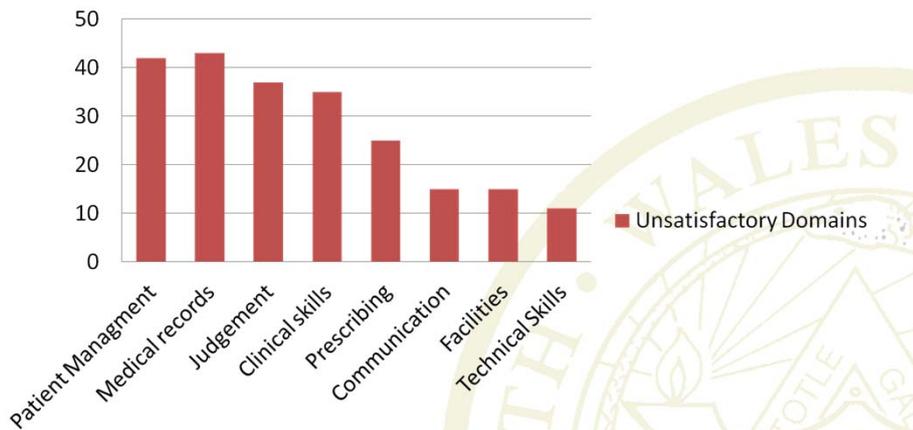
Analysis of all PAs in NSW

- Number of unsatisfactory domains per practitioner (n=60)



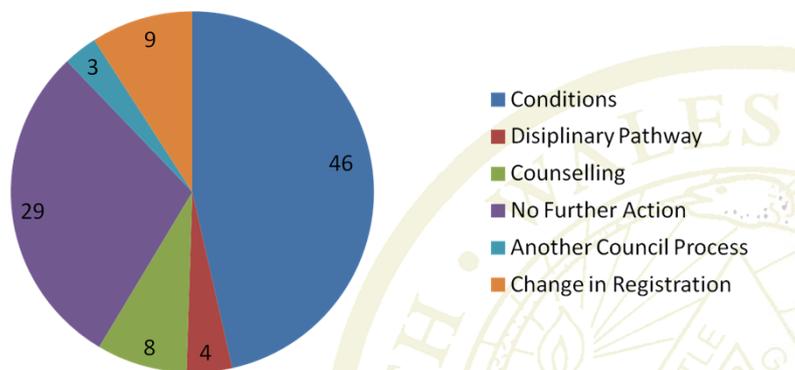
Analysis of all PAs in NSW

- Unsatisfactory Domains (n=60 practitioners)



Analysis of all PAs in NSW

- Final Outcome of Performance Assessments (n=100)



Strength of the Performance Program

- The strengths of the performance program include:
 - identification of deficiencies through a broad based assessment
 - remediation and if necessary, practice restriction
 - flexibility by referral to another pathway including health assessment if impairment is the cause or contributor of the poor performance or to investigation if the matter raises a serious issue of public health or safety or raises a case of professional misconduct or unsatisfactory professional conduct