



Schedule 5 Investigators

Part 1 Power to obtain information

1 Powers of investigators

For the purposes of conducting an investigation, an investigator may, by written notice given to a person, require the person to—

- a) give stated information to the investigator within a stated reasonable time and in a stated reasonable way; or
- b) attend before the investigator at a stated time and a stated place to answer questions or produce documents.

2 Offence for failing to produce information or attend before investigator

- (1) A person required to give stated information to an investigator under clause 1(a) must not fail, without reasonable excuse, to give the information as required by the notice.

Maximum penalty—

- a) in the case of an individual—\$5,000; or
- b) in the case of a body corporate—\$10,000.

- (2) A person given a notice to attend before an investigator must not fail, without reasonable excuse, to—

- a) attend as required by the notice; and
- b) continue to attend as required by the investigator until excused from further attendance; and
- c) answer a question the person is required to answer by the investigator; and
- d) produce a document the person is required to produce by the notice.

Maximum penalty—

- a) in the case of an individual—\$5,000; or
- b) in the case of a body corporate—\$10,000.

- (3) For the purposes of subclauses (1) and (2), it is a reasonable excuse for an individual to fail to give stated information, answer a question or to produce a document, if giving the information, answering the question or producing the document might tend to incriminate the individual.



3 Inspection of documents

- (1) If a document is produced to an investigator, the investigator may—
 - a) inspect the document; and
 - b) make a copy of, or take an extract from, the document; and
 - c) keep the document while it is necessary for the investigation.
- (2) If the investigator keeps the document, the investigator must permit a person otherwise entitled to possession of the document to inspect, make a copy of, or take an extract from the document at the reasonable time and place decided by the investigator.

Part 3 General matters

20 False or misleading information

A person must not state anything to an investigator that the person knows is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of an individual—\$5,000; or
- (b) in the case of a body corporate—\$10,000.

21 False or misleading documents

(1) A person must not give an investigator a document containing information the person knows is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of an individual—\$5,000; or
- (b) in the case of a body corporate—\$10,000.

- (2) Subclause (1) does not apply to a person who, when giving the document—
- (a) informs the investigator, to the best of the person's ability, how it is false or misleading; and
 - (b) gives the correct information to the investigator if the person has, or can reasonably obtain, the correct information.

22 Obstructing investigators

(1) A person must not obstruct an investigator in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty:

- (a) in the case of an individual—\$5,000; or
- (b) in the case of a body corporate—\$10,000.



- (2) If a person has obstructed an investigator and the investigator decides to proceed with the exercise of the power, the investigator must warn the person that—
- (a) it is an offence to obstruct the investigator, unless the person has a reasonable excuse; and
 - (b) the investigator considers the person's conduct is an obstruction.
- (3) In this clause—
- obstruct** includes hinder and attempt to obstruct or hinder.



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Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

9 May 2018

Dr Andrew Pluta
31 Samuel St
CAMP HILL QLD 4152
Private and Confidential

By post and email: apluta33@gmail.com

Dear Dr Pluta

Notice advising you of the Board's decision to investigate

I refer our previous correspondence advising you of the assessment of the notification from Ms Tamanna Relia (the notifier) about Aarav Majajan.

Decision

On 26 March 2018, the Western Triage and Assessment Committee of the Medical Board of Australia (the Committee) decided to investigate your conduct under section 160 of the Health Practitioner Regulation National Law, as in force in Queensland (the National Law).

About 33% of the notifications received by National Boards are referred for investigation. An investigation is one of the ways a Board can gather further information to help it decide whether any action is necessary or appropriate in response to a notification.

Reasons

The Committee decided to investigate because:

[Please note in the reasons you are referred to as 'the practitioner']

- a. In reaching the Committee's decision, it considered the following documents:
 - i. a copy of the complaint form, further detail from the notifier and a practitioner submission received by the Office of the Health Ombudsman (OHO) on 4 January 2018 and referred to AHPRA on 24 January 2018; and
 - ii. the practitioner's submission to AHPRA dated 23 February 2018.
- b. The notifier, Tamanna Relia, raised concerns with the performance of the practitioner, Dr Andrew Pluta. She has alleged that:
 - i. she took her five (5) month old son Aarav Mahajan, the patient, to see the practitioner on 12 December 2017 due to blocked ears. The practitioner prescribed the patient with antibiotics;
 - ii. she returned to the practitioner on 4 January 2018 as there had been no improvement to the patient's blocked ears. The practitioner stated that the patient's ears were blocked but were not infected. The notifier is concerned why the antibiotics were prescribed in the first place;

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undertaking any treatment and providing no treatment would expose the patient to worse long term consequences;

- vi. decongestants have been used widely by doctors as therapy for chronic otitis media with effusion and there are no definite contraindications regarding their use. The restrictions on the use of such a therapy are more designed to stop unrestricted usage of this medication by patients, rather than to preclude the usage of a potentially useful therapy for limited times in the context of a treatment program under the supervision of a medical practitioner;

Issue 2: Whether the practitioner failed to send the patient's medical records (MR) to his new general practitioner (GP) when requested

- vii. the appropriate protocol for transfer of patient medical records is to send a request to the owner/manager of the practice;

Issue 3: Whether the practitioner kept adequate medical records for the patient

- viii. patients are required to attend the clinic for one problem per consultation if wishing to be bulk billed. The notifier indicated she had another issue she wanted to have dealt with (a bump on the patient's head) and was advised that she would have to pay for the consultation extension, which she did not do. She therefore did not provide permission for the consultation to proceed; and

Issue 4: Whether the practitioner's treatment of the patient during consultations on 12 December 2017 and 4 January 2018 was appropriate in particular whether he examined the child's "bump on the head" and provided adequate management of her presenting symptoms

- ix. the patient chose not to have this problem dealt with at this time.
- e. Having considered the concerns identified in the notification, the Committee considers there is insufficient information for it to form a view as to the practitioner's professional performance. The Committee considers further investigation is necessary and appropriate to allow additional evidence to be gathered that will enable an accurate and balanced analysis to be presented to the Committee for consideration.

Next Steps

We will gather information to help the Board make an informed decision about the notification.

You are not required to provide a response to the notification at this time. Further information will be collected. You will then be provided with this information and invited to make a written submission to the Board.

The investigation will be guided by the nature and complexity of the issues. During the course of this investigation you will be provided with progress updates.

You may wish to seek professional advice to assist you to respond to the notification in future. Many health practitioners seek support from their professional indemnity insurer or a legal practitioner.

Where can I get further information about investigations?

To help you understand the investigation process, we recommend that you access



Section 161 Registered health practitioner or student to be given notice of investigation

161— Registered health practitioner or student to be given notice of investigation

- (1) *National Board that decides to investigate a registered health practitioner or student must, within as soon as practicable after making the decision, give the practitioner or student written notice about the investigation.*
- (2) *The notice must advise the registered health practitioner or student of the nature of the matter being investigated.*
- (3) *Also, the National Board must, at not less than 3 monthly intervals, give the written notice of the progress of the investigation to—*
 - (a) *the registered health practitioner or student; and*
 - (b) *if the investigation relates to a notification made about the registered health practitioner or student, the notifier.*
- (4) *However, the National Board need not give the registered health practitioner or student a notice under subsection (1) or (3) if the Board reasonably believes giving the notice may—*
 - (a) *seriously prejudice the investigation; or*
 - (b) *place at risk a person's health or safety; or*
 - (c) *place a person at risk of harassment or intimidation.*

- Clinical notes
- Referrals
- Correspondence / phone calls
- Photographs
- Prescriptions
- Prescription history
- Patient information (details, history etc)
- Consent forms
- Practice policies in relation to:
 - Limiting patients to one issue per consultation,
 - Requiring patients to pay for the consultation in advance/pay before consultations are extended beyond 10 minutes
 - Transfer of medical records to a new practitioner

Section 165 of the National Law requires that an investigator may exercise a power only if the investigator first produces the investigator's identity card for inspection. As this request for information is made in writing, a copy of the investigator's identity card may be viewed, on appointment, at the office of AHPRA.

It is not appropriate for you to discuss this matter with the notifier.

Information Privacy

It is important to note that any response or information you provide may also be made available to Ms Relia. If your response contains any sensitive or confidential information which you do not authorise to be provided to Ms Relia, please also include another version of the response that can be provided to Ms Relia.

The way AHPRA collects, uses and discloses personal information is set out in our [Privacy Policy](#) and is consistent with our legal obligations. Please note that any information collected will only be used during the notification process. Private health information will be treated confidentially at all times, unless otherwise required by law. AHPRA's privacy policy is available at: www.ahpra.gov.au. > 'Freedom of Information and Privacy'.