



PROFESSIONAL STANDARDS COMMITTEE INQUIRY

CONSTITUTED PURSUANT TO PART 8 of
THE HEALTH PRACTITIONER REGULATION NATIONAL LAW (NSW)
To HOLD AN INQUIRY INTO
A COMPLAINT IN RELATION TO

Dr Mahbub Hasan

Date of Inquiry:	11 May 2017
Committee members:	Dr Arthur Glass, PhD, Chairperson Dr Vasco De Carvalho Dr Eileen Rogan Dr Catherine Berglund, PhD
Appearance for Health Care Complaints Commission:	Ms Sarah Talbert barrister assisted by Ms Emma Bayley, Legal Officer for the Commission
Appearance for Dr Mahbub Hasan	Ms Christine Mellis barrister assisted by Mr Andrew Saxton, DibbsBarker
Date of decision:	29 May 2017
Publication of decision:	Refer to page 10 of this decision for details of non- publication directions

BACKGROUND AND SUMMARY

1. Person A's father was a patient at Blacktown Hospital between 7 July 2015 and 10 July 2015. The Respondent was part of the father's treating team and consulted with Person A and her mother during the admission.
2. Person A complained that the Respondent failed to observe proper boundaries when talking to her at the Hospital on 10 July 2015 and when messaging her on 11 July and 14 July 2015.
3. The Western Sydney LHD investigated the complaint.
4. The HCCC obtained a signed statement from Person A and from a number of other witnesses and obtained an expert report from A/Professor P Gonski.
5. A hearing was held on 11 May 2017 when evidence was heard from the Respondent. Person A and the other people who had provided witness statements were not required by the Respondent for cross examination.
6. The Committee found the particulars in the Complaint proven and that this amounted to unsatisfactory professional conduct. It reprimanded the Respondent and imposed conditions requiring mentorship and an educational course.

THE COMPLAINT

7. The Complaint is set out in full as an attachment to this decision. It alleges that Dr Hasan is guilty of unsatisfactory professional conduct under section 139B(1)(a) of the *National Law* in that he has engaged in conduct that demonstrates the knowledge, skill or judgment possessed, or care exercised, by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience. In addition, it is alleged that he is guilty of unsatisfactory professional conduct under section 139B(1)(l) in that he has engaged in improper or unethical conduct relating to the practice or purported practice of medicine.
8. The Particulars of the Complaint are set out in detail below as we use these to organise the material before the Committee. In short, it is alleged that he made inappropriate comments to Person A and, further, inappropriately - provided her with his mobile number, touched her and subsequently messaged her.
9. Particulars 2 and 3 of the Complaint were amended (with little consequence) at the hearing with the consent of the Respondent and the Committee. The Complaint as amended appears below as Attachment A.

THE RESPONDENT'S BACKGROUND

10. Dr Mahbub Hasan was first registered in New South Wales on 27 May 2010. Under the National Scheme he is presently registered nationally in the general category and is employed on this basis. Dr Mahbub Hasan has no conditions on his practice of medicine. Dr Hasan obtained Fellowship of the Bachelor of Medicine Bachelor of Surgery in Dhaka University in 2003. He received his Certificate in Australian Medical Council in 2009.
11. The Respondent held hospital positions between 2010 and 2013. In mid-2013 he obtained part-time work as an advanced trainee at Bankstown Hospital and in February 2015, he commenced work at Blacktown Hospital as a Senior Career Medical Officer. He was suspended from this hospital in July 2015 and his contract expired in January 2016. He commenced working at Maitland Hospital in August 2016. In February 2017,

he commenced work at Manning Base Hospital. He has recently commenced work at John Hunter Hospital as an Advanced Trainee in Endocrinology.

THE LEGAL FRAMEWORK

12. Section 139B of the National Law states:

Meaning of "unsatisfactory professional conduct" of registered health practitioner generally [NSW]

(1) Unsatisfactory professional conduct of a registered medical practitioner includes each of the following:

(a) **Conduct significantly below reasonable standard**

“Conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of practitioner’s profession is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

...

(l) **Other improper or unethical conduct**

Any other improper or unethical conduct relating to the practice or purported practice of medicine.

13. The standard of proof which the Committee must apply is one of reasonable satisfaction. And as the much used statement of *Briginshaw v Briginshaw* (1938) 60 CLR 336 puts it:

"Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the Issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences".

14. These remarks, of course, focus the decision-makers' attention upon the nature of the evidence required to establish the case. They do not change the standard of proof, which remains that of reasonable satisfaction.

15. This is the legal framework in which we are to consider the material placed before us. For the Complaint to be proven, the Committee must be reasonably satisfied on balance that Dr Hasan committed the conduct complained of and that this conduct satisfies the statutory definition of unsatisfactory professional conduct. In this sense the onus is on the Commission to establish that Dr Hasan has departed to the requisite degree from the appropriate standards. The standard of proof relevant to our fact-finding exercise is conventionally referred to as the *Briginshaw v Briginshaw* standard (discussed above). Basically, the standard of proof is proportionate to the gravity of the issue to be proved. These disciplinary proceedings will have professional and personal consequences for Dr Hasan and we have taken account of this in our deliberations.

16. In evaluating Dr Hasan's conduct he is to be judged by the standards of a practitioner of an equivalent level of training and experience. He has held hospital positions in Australia since 2010 and is to be judged accordingly.
17. In the complaint before us, two parts of s 139B (1) of the National Law (NSW) are relied upon, namely, (a) and (l) (see above at paragraph 12). We note that s139B(1) in fact sets out 12 types of conduct that come within the notion of "unsatisfactory professional conduct", and these 12 types may overlap. For instance, conduct coming under part (b) – contravention of this Law or regulation, say, breach of the regulations concerning medical records, may also come under part (a), as a significant breach of the expected standards. What is different about part (l), apart from no reference to significant departure, is that it specifically only covers "any other" improper or unethical conduct. In other words, if it is a type of unsatisfactory professional conduct dealing with impropriety or a lack of ethics that falls under parts (a) to (k) then it would appear that it should be considered under these paragraphs and not under part (l).
18. Accordingly, we first consider whether any proven conduct falls within s 139B (1)(a) (conduct significantly below the expected standards) and only if it does not shall we consider if it falls under 139B (1)(l) (improper conduct).
19. As to what are the standards that apply to a doctor when dealing with a relative of a patient we have in the material before us the relevant NSW Health Code of Conduct (esp. parts 4.2 demonstrate honesty and integrity, 4.3 acting professionally and ethically), the Medical Board of Australia Good Medical Practice: A Code of Conduct for Doctors in Australia (esp. 8.2 Professional Boundaries) and the Medical Board of Australia Guidelines for Doctors on Sexual Boundaries. We have considered this material, as well as the peer review report from A/Prof Peter Gonski.

ISSUES

20. The issues to be determined by this Committee are as follows.

First, whether the Committee is reasonably satisfied on balance that the factual particulars of the Complaints are proven.

Second, whether the conduct overall amounts to unsatisfactory professional conduct.

And third, whether orders of directions made by way of Part 8, Division 3, Subdivision 3 of the National Law are appropriate.

21. An issue for the Chairperson is whether non-publication directions should be made.

THE MATERIAL BEFORE US AND OUR REASONING RELEVANT TO EACH PARTICULAR

22. The Particulars raise some seven allegations against Dr Hasan. In these circumstances, it makes sense to set out our findings immediately after setting out the relevant evidence for each rather than in a separate section after we have set out the evidence before us on all of the particulars.
23. We set out the material before us on each particular separated for the most part between material disclosed by the documents before us and material presented at the hearing; which was held on 11 May 2017 when evidence was given by the Respondent.

24. We have had the benefit of submissions from both the HCCC and the Respondent's legal advisers. We have listened to these carefully and make reference to them below where appropriate. It was agreed implicitly at the commencement of the hearing that this was a one-stage hearing (i.e. the Committee would decide if unsatisfactory professional conduct was made out and then decide which, if any, orders were appropriate without receiving further evidence or material from the parties).
25. Particular 1 concerns conduct alleged to have happened on 10 July 2015 when Person A and the Respondent were alone in the communal kitchen area at Blacktown Hospital. Person A gives one version of these events and Particular 1 is based on her allegations. The Respondent agrees to some of the facts alleged by Person A but he denies that he had any sexual or personal motivation to get to know Person A better. We note that Person A's response to what took place was (as submitted by the HCCC) immediate, clear and detailed. She straight away told her mother what had happened and complained to the registered nurse in charge, Ms Tumapang. We have before us signed statements from Person A, her mother and Ms Tumapang. These witnesses were not required for cross-examination at the hearing by the Respondent. In fairness we add that the Respondent's version of events has remained unchanged. He responded to the hospital's internal investigation (via his lawyers) on 23 July 2015 and made some concessions. This response was the basis of his submission to the HCCC on 7 August 2015 and his statement for the Committee of 6 February 2017; as well as the basis for his evidence before the Committee.
26. Particulars 2 and 3 allege that the respondent failed to observe professional boundaries when he messaged Person A on 11 and 14 July 2015. Here the Respondent agrees that he sent these messages but says that these messages were sent by mistake, as he thought he was messaging someone else. Although we deal with Particular 1 first, as we state below, our view of Particulars 2 and 3 has helped form our views about Particular 1.
27. **Particular 1 reads:** On 10 July 2015, the practitioner failed to observe appropriate professional and/or sexual boundaries while consulting with Person A alone in the communal kitchen area of Blacktown Hospital, concerning Patient B's care in that he:

(a) commented to Person A that she was beautiful;

(b) told Person A if he wasn't married he would have proposed to her;

(c) suggested to Person A that she could have his mobile number for a "future fling";

(d) on his own initiative, provided Person A with his mobile telephone number by calling her mobile telephone in circumstances where immediately prior he had raised the possibility of a "future fling".

(e) Initiated a hug with Person A shortly after the events referred to above in (a) – (d) during which he touched her buttock with his left hand.

28. In his recent statement the Respondent states that he gave Person A his phone number so that she could ring him about issues relating to her father's medical treatment. It was with the aim of reassuring her that he then said words to her to the effect:

"I want to clarify that I'm not giving the number to you for any other reason. Not that I'm trying to have fling with you. You are beautiful and I suppose you have boyfriend and I am married. If I wasn't I would have proposed many"

29. The Respondent now sees that these comments were inappropriate and could have been construed as flirtatious. The Respondent states that at the time Person A was teary and he gave her a “brief platonic hug”.
30. The Respondent admits particular 1 parts (a), part (b), except that he said “I would have proposed many”, not “have proposed to her”. He denies parts (c), he says he said “it is *not* that I’m trying to have a fling with you. As for (d) he admits he provided his mobile number in a context in which he had mentioned the word “fling” and this may have created uncertainty in Person A’s mind. As for (e), he denies that he initiated a hug but says in any event it was mutual and he denies touching her on the buttock.
31. There is some agreement between Person A and the Respondent about what was said and that there was a hug. However, the Respondent asserts that these words and the hug occurred solely in the context of allowing Person A to ring him if she had concerns about her father; and with no motivation on his part to get to know Person A better, possibly to have a “fling” with her.
32. **For three reasons, we prefer Person A’s account of these events.** First, as noted, her reaction was immediate and the statement we have from her, composed soon after the events, is detailed and internally consistent. We have no reason to doubt that what is recorded is what she thought occurred. Could she have been mistaken about some aspects of what occurred? Perhaps she didn’t hear the significant word, *not*, before the suggestion by the Respondent that they may have a future fling. Perhaps she imagined that he touched her buttock with his hand when he didn’t. For the reasons we give below we think it unlikely that she was mistaken.
33. Second, the Respondent’s account of these matters is not convincing. If his only interest was in giving Person A his phone number so that she could discuss concerns she had about her father, why say to her, as he concedes he did, the following three statements – (1) she was beautiful, (2) that he would have proposed to her in other circumstances and (3) he was giving the number not because he was trying to have a “fling” with her? The Respondent says that his intention in saying these things was to reassure Person A and to “display humour”. We find this explanation implausible. Just as we find implausible his account of the hug as merely a reflexive and involuntary action on his part.
34. Third, as we discuss below we do not accept the Respondent’s account as to how he came to mistakenly message Person A on 11 and 14 July 2015. As our view is that he intended to send these flirtatious messages to Person A this adds weight to our preferring Person A’s account of the events on 10 July 2015 over the Respondent’s version of these events.
35. In short, we find Particulars 1 (a), (b), (c), (d) and (e) proven and with the material set out at paragraph 19 above in mind, this amounts to unsatisfactory professional conduct under s 139B(1)(a) as a significant departure from the expected standards.
36. **Particular 2 reads** - On 11 July 2015, the practitioner failed to observe appropriate professional boundaries in that he contacted Person A using the mobile messaging platform WhatsApp and texted, “send me your face plz”.
37. **Particular 3 reads** - On 14 July 2015, the practitioner failed to observe appropriate professional boundaries in that he contacted Person A using the mobile messaging platform Viber and texted, “u busy bee?”.
38. As noted, the Respondent admits that he messaged Person A on 11 July and again on the 14 July 2014 but says that he thought he was messaging someone else, namely Dr Lisa Guan. He was trying to arrange a study session with Dr Guan for the coming fellowship exams, he says. The Respondent explains his mistake by pointing to the fact

that he had saved in his phone directory two numbers that appeared next to each other – Lisa (for Dr Guan) and L... (for Person A). On 11 July he messaged via WhatsApp “Send me your face plz”. And when he received the reply – “who is this?” he replied with a picture of a hospital corridor at Westmead Hospital (where he was studying that day) pointing to the high dependency unit. He was, he says, attempting to convey the stress of the exam. On 14 July he followed this up on Viber with the message – “u busy bee”.

39. A Signed declaration from Dr Guan states, among other things that she does not use the first names Lisa or Lina but rather Ling. She recognised a photograph of him as ‘Raj’ who was a colleague who had started at Nepean Hospital around the same time as she had started, at the end of January 2013. She states that in October 2014 she met the Respondent again, when they were both working at the Blue Mountains Hospital. They talked of the possibility of studying together and may have exchanged phone numbers. She adds, the exam is held from mid-July to the end of July. If the Respondent was going to prepare with her she would have expected him to contact her earlier than mid-July. We note that at the hearing the Respondent did not require Dr Guan for cross examination.
40. At the hearing the Respondent was questioned about why he would send these messages – “send me your face plz” and “u busy bee” – to Dr Guan, someone he hadn’t spoken to since October 2014 who was only an acquaintance. The Respondent said he was trying to be humorous as he was embarrassed to be getting in touch with her so close to the exam. In response to the question “who is this?” the Respondent had sent a picture of a hospital ward. As to how this would clarify who was the sender to a doctor who presumably had many doctor friends, the Respondent said he was trying to be humorous thinking that Dr Guan would recognise the high dependency unit as a stressful place.
41. The Respondent was mistaken as to the intended addressee twice on two different messaging platforms. As to how this happened the Respondent said, “he couldn’t explain this logically to himself”. As to why he switched from WhatsApp to Viber the Respondent said possibly he had forgotten he had earlier used WhatsApp; and possibly at this stage he had even forgotten the name of Person A, as he had difficulty remembering people’s names. Subsequently he suggested (puzzlingly) that he switched messaging platforms perhaps because he saw that the recipient was not online or because he had been blocked.
42. **Our views of the above** is as follows. We find the Respondent’s version of these events highly implausible. Of course, a message may be sent to the wrong person. But twice over a few days on two messaging platforms? And to send *those particular messages* as a humorous way of making contact with Dr Guan, as claimed by the Respondent, makes little sense. We are satisfied that the Respondent intended to send these messages to Person A. Particulars 2 and 3 are in our view made out. With the material set out at paragraph 19 above in mind, this amounts to unsatisfactory professional conduct under s 139B(1)(a) as a significant departure from the expected standards.

Summary of our findings

43. We find proven Particular 1 of the Complaint (i.e. 1 (a), (b), (c), (d) and (e)) and Particulars 2 and 3.
44. We find that this amounts to unsatisfactory professional conduct within the meaning of section 139B(1)(a) of the National Law (NSW).

THE APPROPRIATE ORDERS

45. With regard to the appropriate orders in this matter, the Committee notes its jurisdiction in these disciplinary proceedings is both to protect the public, and to assist in maintaining the appropriate ethical and clinical standards of the profession. With the object of protecting the public in mind we must take account both of the likelihood of Dr Hasan repeating the professional conduct we have found to be unsatisfactory in these proceedings, and also the need to deter others from falling short of the expected standards. It is not our role to punish Dr Hasan.
46. We must now consider the relevant protective orders to be made. The Committee notes that the powers available to it in this regard are set out in s146B of the National Law. A Committee may do one or more of the following:
- a) caution or reprimand the practitioner;
 - b) direct that the conditions, relating to the practitioner's practising of the practitioner's profession, it considers appropriate be imposed on the practitioner's registration;
 - c) order that the practitioner seek and undergo medical or psychiatric treatment or counselling;
 - d) order that the practitioner complete an educational course specified by the Committee;
 - e) order that the practitioner report on the practitioner's practice at the times, in the way and to the persons specified by the Committee;
 - f) order that the practitioner seek and take advice, in relation to the management of the practitioner's practice, from the persons specified by the Committee
47. In its submission the Commission proposed as appropriate orders a reprimand, and an educational course, such as the course on professional boundaries conducted by Davaar Consultancy. The Respondent's reply to this was to agree that this educational course was appropriate but to argue that this was a case that warranted a caution rather than a reprimand.
48. It was the HCCC's submission that if proven this was a low-level boundary violation but it was nonetheless still significant. We agree with this assessment and in our view such a violation warrants a reprimand rather than a caution.
49. The Respondent gave evidence that he is now employed at John Hunter Hospital as an Advanced Trainee in Endocrinology and that his plan is to complete dual Fellowships in internal medicine and endocrinology. The Respondent set out in his statement a number of educational courses that he has done since July 2015. Some of these are potentially relevant to the matters alleged against him in the Complaint; for example, a day course on assertive influence and an online course on communication skills.
50. The Respondent had planned to do the two day Davaar Consultancy course on professional boundaries in February 2017 but had changed his enrolment to late June 2017. He postponed the course as he was busy moving to a new house and he preferred to attend a course at Harvard Medical School in March 2017 and the World Congress of Clinical Lipidology at Brisbane in February 2017. The Respondent explained why he made the choice to postpone the professional boundaries course as a decision that made sense in the context of his career, for he could always attend the ethics course

later in the year. However, this left the impression that he was not taking sufficiently seriously the matters alleged against him.

51. As to the specific matters particularised in the Complaint, Dr Hasan told the Committee that in the future he would not use any colloquial words that can confuse patients or their carers. He said he would try to keep things simple so that the crux of the discussion was easy and simple. If faced with the same scenario, he would not take Person A outside to discuss any matter, he would keep another person available, he would not indulge in any physical contact, even if it was a handshake, and if it was initiated by a carer or patient he would respond in a professional manner. He would not provide personal phone numbers, and if needed, a carer and patient could communicate with him by the hospital switchboard. He would not store any form of patient or carer personal details in his phone or other device.
52. Given we have found that Person A's version of events is preferred, and the complaint is proven, the Committee is concerned that Dr Hasan currently considers that part of his unsatisfactory professional conduct was due to his use of words that could confuse patients or carers. Clearly, Person A was distressed at the words used and conduct of Dr Hasan, both in the hospital and in the messages that he sent to her subsequently. The words were a personal approach to her, and were not part of a clinical discussion. There was no confusion about what the words were, and the conduct was clearly inappropriate and unprofessional.
53. Dr Hasan's current insight into the gravity of his conduct is of some concern, and for this reason, given the need for educative and protective conditions, the Committee raised with the parties the possibility of a mentor condition, which would allow for individual discussion on such issues. This is in addition to the two day professional boundaries course suggested by both parties. We have been given no reasons by the HCCC or the Respondent as to why we should not do this.
54. Accordingly, in addition to the reprimand we impose orders requiring the completion of an educational course and a mentoring condition tailored to the circumstances of the case. On our inquiries the proposed course offered by Davaar Consultancy is not as suitable as the course on professional boundaries offered by MDA National. Accordingly we have ordered the completion of this course.

DETERMINATION

55. The Committee finds Dr Hasan guilty of unsatisfactory professional conduct within the meaning of section 139B(1)(a) of the National Law (NSW).

ORDERS

56. The Committee makes the following orders;

1. The practitioner is reprimanded.

2. The following practice conditions are imposed on the practitioner:

1. To complete within 6 months of 29 May 2017 the Practical Solutions to Patient Boundaries organised by MDA National.

- (a) Within 1 month of 29 May 2017 he must provide evidence to the Medical Council of NSW of his enrolment in the above mentioned course.

- (b) Within one month of completing the above mentioned course, he is to provide documentary evidence to the Council that he has satisfactorily completed the course.
- (c) To bear responsibility for any costs incurred in meeting this condition.

In the event that the Practical Solutions to Patient Boundaries course is unavailable, he must propose to the Council for approval a similar course to be undertaken in accordance with the requirements of this condition no later than 2 months from 29 May 2017.

2. To nominate an experienced practitioner to act as his professional mentor for approval by Medical Council of NSW in accordance with the Medical Council of NSW's Compliance Policy – Mentoring (as varied from time to time) and as subsequently determined by the appropriate review body.
 - (a) To authorise the Medical Council of NSW to provide proposed and approved mentors with a copy of the decision of the proceedings which imposed this condition.
 - (b) At each monthly mentoring meeting the practitioner is to initially include discussion of the issues highlighted in the decision and then any ethical, personal and/or medical practice issues that may arise. Particular attention is to be given to the requirements of the NSW Health Code of Conduct (esp. parts 4.2 demonstrate honesty and integrity, 4.3 acting professionally and ethically), the Medical Board of Australia Good Medical Practice: A Code of Conduct for Doctors in Australia (esp. 8.2 Professional Boundaries) and the Medical Board of Australia Guidelines for Doctors on Sexual Boundaries.
 - (c) To authorise the mentor to report, in an approved format, to the Council every two months about the fact of contact, and to inform the Council if there is any concern about his professional conduct, or personal wellbeing.
 - (d) To be mentored for a minimum period of 6 months and as subsequently determined by the Council.

PUBLICATION OF DECISION

57. Pursuant to section 171E(1) of the National Law the Committee provides copy of this written statement of decision to Dr Hasan, the Health Care Complaints Commission and the Medical Council of NSW.

NON-PUBLICATION DIRECTION

58. At the Directions Hearing on 14 April 2017 non-publication orders were sought and made by the Chairperson with regard to the name and address of Person A.

59. The Chairperson has continued this non-publication direction regarding the name and address of Person A (by way of Schedule 5D, clause 7 of the National Law (NSW)) and any information which might identify her in these proceedings is not to be published by any person.

60. This direction does not operate to exclude any provision of the National Law and does not preclude the Medical Council from undertaking its statutory functions.

61. 'Publication' may include communicating either in writing or verbally to any person.

APPEAL

62. An appeal to the Occupational Division of the NSW Civil and Administrative Tribunal on a point of law is to be made within 28 days of handing down of the decision.

63. An appeal to the Occupational Division of the NSW Civil and Administrative Tribunal on a point of law is to be made within 28 days of the date of this decision.

64. Dr Hasan also has the right to seek a review by the Medical Council of NSW of the Committee's Order to impose Conditions. The Medical Council is the appropriate review body for the purposes of Part 8, Division 8 of the *Health Practitioner Regulation National Law (NSW)*.

65. Sections 125 to 127 of the National Law are to apply whilst the practitioner's principal place of practice is anywhere in Australia other than in New South Wales, so that a review of these conditions can be conducted by the Medical Board of Australia.

A handwritten signature in black ink, appearing to read 'A Glass', written in a cursive style.

Dr Arthur Glass (PhD)
Chairperson

29 May 2017

Attachment A

The **Health Care Complaints Commission** of Level 13, 323 Castlereagh Street, Sydney, NSW, having consulted with the **Medical Council of New South Wales** in accordance with sections 39(2) and 90B(3) of the *Health Care Complaints Act 1993* and section 145A of the *Health Practitioner Regulation National Law (NSW)* (*‘the National Law’*);

HEREBY COMPLAINS THAT

Dr Mahbub Hasan of 5 Jordan Avenue NEWINGTON NSW 2127 being a medical practitioner registered under the *National Law* (“the practitioner”),

COMPLAINT ONE

Is guilty of unsatisfactory professional conduct under section 139B of the *National Law* in that the practitioner has:

- (i) engaged in conduct that demonstrates the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience; and/or
- (ii) engaged in improper or unethical conduct relating to the practice or purported practice of medicine.

Each particular in itself justifies a finding of unsatisfactory professional conduct. In the alternative, when two or more particulars are taken together, a finding of unsatisfactory professional conduct is justified.

BACKGROUND TO COMPLAINT ONE

Between 7 July 2015 and 10 July 2015, Patient B was a patient at Blacktown Hospital. Patient B had several previous admissions at Blacktown Hospital due to his declining condition. On 7 July 2015 he was admitted for bilateral foot pain.

The Practitioner was one of Patient B’s treating medical practitioners during this admission. The practitioner also consulted with Patient B’s wife and his daughter, Person A throughout the period of his admission regarding his care and treatment.

PARTICULARS

1. On 10 July 2015, the practitioner failed to observe appropriate professional and/or sexual boundaries while consulting with Person A alone in the communal kitchen area of Blacktown Hospital, concerning Patient B’s care in that he:

(a) commented to Person A that she was beautiful;

(b) told Person A if he wasn't married he would have proposed to her;

(c) suggested to Person A that she could have his mobile number for a "future fling";

(d) on his own initiative, provided Person A with his mobile telephone number by calling her mobile telephone in circumstances where immediately prior he had raised the possibility of a "future fling".

(e) Initiated a hug with Person A shortly after the events referred to above in (a) – (d) during which he touched her buttock with his left hand.

2. On 11 July 2015, the practitioner failed to observe appropriate professional boundaries in that he contacted Person A using the mobile messaging platform WhatsApp (Viber deleted) and texted, "send me your face plz".
3. On 14 July 2015, the practitioner failed to observe appropriate professional boundaries in that he contacted Person A using the mobile messaging platform Viber (WhatsApp deleted) and texted, "u busy bee?".