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Inquiry into Bogus, Unregistered and Deregistered Health Practitioners

THIRTIETH REPORT
OF THE
SOCIAL DEVELOPMENT COMMITTEE

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ESTABLISHMENT AND COMPOSITION OF THE COMMITTEE

The Social Development Committee is established pursuant to Sections 13, 14 and 15 of the *Parliamentary Committees Act 1991*. Its six Members are drawn equally from the Legislative Council and the House of Assembly:

Hon. Ian Hunter MLC (*Presiding Member)*

Hon. Dennis Hood MLC

Hon. Stephen Wade MLC

Mr Adrian Pederick MP

Ms Lindsay Simmons MP

Hon. Trish White MP

The Committee is assisted by:

Ms Robyn Schutte, Committee Secretary (0.8 FTE)

Ms Kristina Willis-Arnold, Committee Secretary (0.2 FTE)

Ms Sue Markotić, Research Officer

Ms Cynthia Gray, Administrative Officer (0.3 FTE)

FUNCTIONS OF THE COMMITTEE

The functions of the Social Development Committee are set out in Section 15 of the *Parliamentary Committees Act 1991* and charge the Committee —

(a) to inquire into, consider and report on such of the following matters as are referred to it under this Act:

  (i) any matter concerned with the health, welfare or education of the people of the State;

  (ii) any matter concerned with occupational safety or industrial relations;

  (iii) any matter concerned with the arts, recreation or sport or the cultural or physical development of the people of the State;

  (iv) any matter concerned with the quality of life of communities, families or individuals in the State or how that quality of life might be improved;

(b) to perform such other functions as are imposed on the Committee under this or any other Act or by resolution of both Houses.

TERMS OF REFERENCE

On Wednesday 20 June 2007, the House of Assembly referred the following reference to the Committee:

> That the Social Development Committee investigate and report upon the issue of bogus, unregistered and deregistered health practitioners in South Australia, and in particular —
>
> a) their prevalence in South Australia;
>
> b) the practices they use, and associated health and safety risks;
>
> c) the methods they use to promote their services and the risks of exploitation of sick and vulnerable people;
>
> d) the measures, regulatory or otherwise, that can be taken to better protect the public; and
>
> e) any other related matter.[1]

During the course of the Inquiry, the Committee was given an additional term of reference. Specifically, on 7 May 2008, the House of Assembly resolved that the Department of Health's *Report on Harms Associated with the Practice of Hypnosis and the Possibility of Developing a Code of Conduct for Registered and Unregistered Health Practitioners* should also be referred to the Committee for its examination.[2]

While the Committee's examination of the Department's report occurred concurrently with its Inquiry into bogus, unregistered and deregistered health practitioners, the Committee considered the issue of hypnosis separately and determined that a stand-alone report was warranted.[3]

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[1] Hon. Trish White MP, 20 June 2007, 'Health Practitioners,' Hansard, House of Assembly, Parliament of South Australia, page 451.

[2] Hon. John Hill MP, 7 May 2008, 'Bogus, Unregistered and Deregistered Health Practitioners,' Hansard, House of Assembly, Parliament of South Australia, page 3377.

[3] *See* Social Development Committee: A review of the Department of Health's report into hypnosis at www.parliament.sa.gov.au/committees/standingcommittees

EXECUTIVE SUMMARY

It is well recognised that people use alternative therapies for a wide range of reasons. This includes individuals who are diagnosed with a debilitating medical condition or terminal illness who may look beyond mainstream medicine for resolution. Sadly, it is at this juncture in their life that many of these individuals are most vulnerable to exploitation.

On 20 June 2007, the House of Assembly—on a motion of the Hon. Trish White MP—directed the Social Development Committee to undertake an Inquiry into bogus, unregistered and deregistered health practitioners. In part, the Inquiry was established as a result of complaints made to the South Australian Health and Community Services Complaints Commissioner regarding the treatment of people with terminal cancer by unregistered health practitioners.[4]

In South Australia, as in other Australian jurisdictions, health care services are provided by a range of both registered health practitioners (such as doctors, nurses and dentists) and unregistered health practitioners (such as those working in complementary health: naturopaths, massage therapists and counsellors). While some issues concerning registered health practitioners were brought to the Committee's attention, the Inquiry's main focus, in accordance with its terms of reference, was on unregistered health practitioners—that is, persons who provide a health service but who are not registered under one of South Australia's ten registration Acts for health professionals.

The Committee recognises that many unregistered health practitioners perform an important and legitimate health service to consumers. However, the Committee was particularly interested to learn whether unregistered health practitioners have appropriate standards of education and training and whether proper processes are in place to ensure consumers have adequate recourse in the event of poor treatment or serious harm. While many complementary health care providers have established professional bodies, the Inquiry heard that there has been a proliferation of these bodies and, as such, there are inconsistent standards of training and education.

It is of serious concern to the Committee that, as things currently stand, people are permitted to work in a variety of health settings that are almost entirely unregulated and, consequently, have no competency requirement. For example, in South Australia, there are currently no legislative restrictions preventing untrained and unqualified individuals from setting themselves up as naturopaths or counsellors. The Committee finds this situation less than ideal.

The gap in regulatory provisions makes it possible for bogus unregistered practitioners to establish a practice and exploit unsuspecting health consumers at their most vulnerable. The Committee considers health practitioners to be 'bogus' if they misrepresent themselves as being qualified and/or make claims that cannot be substantiated. The Committee understands that such practitioners are often skilled at exploiting people's fears and creating a sense of hope based on deception. While some of these practitioners may be delusional—convinced that they are able to cure serious

[4] *See* Hon. John Hill, 19 October 2006, Hansard, House of Assembly – Estimates Committee B, Parliament of South Australia, page 72.

medical conditions—the evidence presented to the Committee suggested that others are driven by greed and, in some cases, sexual gratification.

Although the Committee received evidence of a number of instances of alleged misconduct, it is difficult to quantify the extent to which bogus health practitioners operate in South Australia. Overall, the number of reported cases is low. However, the Inquiry heard that shame and embarrassment often prevent individuals from coming forward. Moreover, in cases where an individual has died, it can be very difficult for a surviving partner or family member to pursue a complaint.

The Inquiry heard a number of allegations of serious misconduct. These included:

a) an allegation that an unregistered practitioner had claimed he could provide a '50 per cent cure' for cancer and had insisted that the patient sign a confidentiality form;

b) an allegation that an unregistered practitioner had promised to cure a woman of her breast cancer, dissuaded her from continuing with conventional medical treatment, and required in excess of $5000 in cash payments. The Inquiry was told that the same practitioner had displayed a prominent sign outside her premises that read: 'You don't have to die from cancer or any other sickness'; and

c) an allegation that an unregistered massage therapist had claimed, while massaging a man dying of bowel and liver cancer, that she could feel his tumours shrinking.

The Inquiry also examined the issue of deregistered health practitioners and heard disturbing evidence of instances in which deregistered health providers had re-badged themselves and then practised in an unregulated area of health care. For example, the Committee heard of a case involving a psychiatrist who, after being deregistered, had established a practice as a counsellor. In another case, a deregistered general practitioner set up practice as a nutritionist. At present, in South Australia, there are no legislative restrictions in place to prevent such occurrences.

The Committee is of the strong view that where a registered health practitioner has been deregistered for unprofessional or unethical conduct, she or he should be prevented from providing other health services. The Committee has recommended that the Government consider legislative amendments to all relevant health legislation to ensure that, in such instances, deregistered health practitioners are unable to re-establish themselves under a different title in an unregulated area of health care.

Of the submissions received, most supported the need for reform. While the majority of witnesses agreed that greater regulation of unregistered health practitioners was needed, what form this regulation ought to take was a point of difference.

In considering the most appropriate measures, regulatory or otherwise, that can be taken to better protect the public; the Committee examined regulatory approaches taken in other Australian jurisdictions. The Committee considers there is merit in the development and implementation of a code of conduct similar to that which exists in

New South Wales. It also considers there is merit in establishing a statutory registration scheme for Chinese medicine practitioners, acupuncturists and Chinese herbal dispensers such as that introduced in Victoria. To this end, the Committee has recommended that the State Government introduce legislation to regulate a broad range of currently unregistered health practitioners and in doing so closely examine other regulatory models to determine their appropriateness and applicability to South Australia.

From the evidence presented to the Inquiry, the Committee considers that the capacity for consumers who have been exploited by bogus practitioners to find proper recourse appears to be severely limited. The Committee considers that current complaint mechanisms are far from adequate in dealing with unregistered health practitioners.

The Committee notes that South Australia's Health and Community Services Complaints Commissioner has received and investigated a number of complaints about the questionable practices of particular unregistered health practitioners. However, the Committee is concerned that no official public health warnings naming any of those individuals have ever been issued by the Commissioner. This is in contrast to the recent public warnings about dubious health practitioners issued by the New South Wales Health Care Complaints Commission.

The Committee recognises that a decision to issue a public health warning in relation to an individual practitioner should not be made lightly, nor should it occur without procedural fairness being afforded to the individual concerned. However, from the evidence presented to the Inquiry it appears that there have been opportunities when this power could have been applied under existing legislation, but there has been a clear reluctance to do so. The Committee is concerned that the Health and Community Services Complaints Commissioner has taken a far too cautious approach in this regard. It considers that, for the public to be protected, the Commissioner should take action to publicly identify those individuals who exploit or represent a risk to health consumers.

In addition, the Committee has recommended that the Commissioner's legislative powers be expanded in line with those which exist in other jurisdictions. In New South Wales, a code of conduct for unregistered health practitioners allows the New South Wales Health Care Complaints Commission to make prohibition orders against those practitioners who pose a substantial risk to public health. The Committee considers that such an expanded power would enable South Australia's Commissioner to deal with complaints against unregistered health practitioners in a more effective and decisive manner.

The Committee also notes that health consumers may not necessarily be aware of current complaints mechanisms, and in particular, the role of the Health and Community Services Complaints Commissioner. The Committee would like to see a greater emphasis placed on public awareness about the Commissioner's role, particularly in relation to the expanded legislative power it has recommended.

According to the evidence presented, the services of bogus health practitioners are commonly promoted by word of mouth. In addition, testimonials – personal statements espousing the benefits of a particular therapy or product – are put forward as a way of convincing consumers that a therapy will have benefit. The Committee has called on the

Government to identify ways to ensure consumers are able to differentiate between credible health claims and those that are exaggerated and/or unsubstantiated.

The Inquiry also heard about bogus practitioners displaying dubious credentials – in some cases purchased from online universities – to dupe consumers into thinking they are appropriately qualified. To prevent such instances occurring in the future, the Committee has recommended that, as part of the introduction of a stricter legislative framework, the Government ensure that all registered and unregistered health practitioners are required to publicly display legitimate and properly accredited qualifications at their central place of employment, and are prohibited from displaying unaccredited qualifications.

The Committee carefully considered all the evidence put before it and has consequently recommended a number of other changes to unregulated health care in South Australia. It hopes that the implementation of these recommendations will give health consumers greater confidence that health practitioners are appropriately trained and competent to practise.

Data collected by the Australian Bureau of Statistics has highlighted a significant rise, over the last decade, in the number of practitioners working in largely unregulated areas of health care. This increase is perhaps not surprising given the ease with which individuals are able to enter some areas of health care. Such an increase strengthens the case for urgent reform. The Committee expects the Government to act expeditiously to implement its recommendations and ensure there are better controls in place to protect the public.

Finally, the Committee acknowledges the significant contribution of those who provided submissions to the Inquiry. In particular, it thanks those individuals who shared their intensely personal stories either through written submission or by appearing before the Inquiry.

RECOMMENDATIONS

Legislative Framework

1. The Committee recommends that the Minister for Health introduce legislation to regulate a broad range of currently unregistered health practitioners and, in doing so, clearly establish:
   a) the range of health practitioners that are covered under the legislation;
   b) appropriate complaint and disciplinary mechanisms (including effective sanctions);
   c) appropriate standards of training and education, including continuing professional education programs;
   d) appropriate record-keeping systems, including the issuing of receipts;
   e) a mechanism for monitoring the performance of practitioners;
   f) a mechanism for reporting adverse events; and
   g) proper standards for infection control.

2. The Committee recommends that, in developing legislation to regulate unregistered health practitioners, the Minister for Health ensure:
   a) this work is guided by the six criteria put forward by the Australian Health Ministers' Advisory Council (AHMAC) for assessing the need for the statutory regulation of unregulated health occupations[5];
   b) consultation is undertaken with the Health and Community Services Complaints Commissioner, statutory health registration boards, health professional associations and relevant consumer groups; and
   c) the merits of the regulatory models that have been recently introduced in other jurisdictions are examined to determine their appropriateness and applicability to South Australia and establish if any of them would deliver better protection to South Australian health consumers.

Health and Community Services Complaints Commissioner

3. The Committee recommends that the Minister for Health ensure that the office of the Health and Community Services Complaints Commissioner continues to improve both consumer awareness of its services and its ability to investigate complaints about bogus health practitioners.

[5] For more information on the AHMAC criteria refer to page 71 of this report.

4. The Committee recommends that the Minister for Health consider strengthening the Health and Community Services Complaints Commissioner's ability to deal with bogus unregistered health practitioners by expanding the Commissioner's legislative powers to allow prohibition orders to be made against those practitioners who pose a substantial risk to public health.

5. The Committee recommends that the Health and Community Services Complaints Commissioner exercise the existing legislative powers under the *Health and Community Services Complaints Act 2004* to their full extent and publicly identifies bogus health practitioners and exposes their dubious treatments and practices.

6. The Committee recommends that the Minister for Health review the effectiveness of the protocols of the current co-regulatory complaints model between the Health and Community Services Complaints Commissioner and South Australia's statutory health boards to ensure they are appropriate and effective and do not unduly delay the complaints process, unintentionally confuse health complainants or further exacerbate the difficulties experienced by them.

Community Awareness

7. The Committee recommends that the Minister for Health, in conjunction with relevant stakeholders, identify ways to ensure health consumers, particularly those most vulnerable to exploitation by bogus health practitioners, are able to differentiate between credible health claims and those that are exaggerated and/or unsubstantiated to enable them to make informed choices.

8. The Committee recommends that, in conjunction with the proclamation of any new legislation regulating unregistered health practitioners, the Minister for Health ensure a concerted effort is made to increase community awareness of both continuing and new health complaints mechanisms. The Committee further recommends that prior to the proclamation of any new legislation, the Minister for Health take steps to increase community awareness of existing statutory health complaints processes.

9. The Committee recommends that the Department of Health work more effectively with the media to ensure that the promotion and advertising of dubious health products and treatments is minimised, and health reporting is accurate.

Direct Care Workers

10. The Committee recommends that the Minister for Health and the Minister for Disability investigate whether existing educational standards and police checks of direct care workers in the health and community services sectors are adequate.

Misleading Advertising

11. The Committee recommends that the Office of Consumer and Business Affairs, in conjunction with the Department of Health, continue to monitor instances of false and misleading advertising by health practitioners and develop further strategies to help consumers identify and lodge formal complaints about such advertising.

Data Collection

12. The Committee recommends that the Department of Health establish a mechanism to ensure that any complaints it receives about bogus health practitioners are properly recorded, monitored and referred to the relevant authorities.

Deregistered Health Practitioners

13. The Committee recommends that the Minister for Health consider amending all relevant health legislation (similar to that which exists under the *New South Wales Psychologists Act 2001*), so that deregistered health practitioners – who have been deregistered for disciplinary reasons – are unable to re-establish themselves under a different title and/or continue to practise in unregulated areas of health care, without review.

14. The Committee recommends that the Minister for Health encourage all South Australian statutory health boards to establish and maintain data systems which enable consumers and employers to access up-to-date information about practitioners who have been deregistered, cancelled or suspended or who have conditions or limitations placed on their practice.

Professional Associations

15. The Committee recommends that the Minister for Health strongly encourage the professional associations representing the range of complementary health occupations to develop clear professional structures and standards (in line with Recommendation 1 of this report).

16. The Committee recommends that the Minister for Health strongly encourage the plethora of professional associations currently representing the range of complementary health occupations to consolidate their operations wherever possible.

Qualifications

17. The Committee recommends that, as part of the introduction of a stricter legislative framework, the Department of Health ensure that all registered and unregistered health practitioners are required to publicly display legitimate and properly accredited qualifications at their central place of employment at all times and are prohibited from displaying unaccredited qualifications.

Financial Accountability

18. The Committee recommends that the Minister for Consumer Affairs implement strategies to encourage consumers to play a greater role in identifying bogus health practitioners who operate on a cash-in-hand basis without proper record-keeping, issuing of receipts or invoicing procedures.

19. The Committee recommends that the State Government urge the Commonwealth Government to strengthen the capacity of the Australian Taxation Office to investigate any complaints by health consumers about inappropriate record-keeping and potential tax evasion by dubious health practitioners.

Unregulated Cosmetic/Health Procedures

20. The Committee recommends that, as soon as possible, the Minister for Health define and implement clear standards of practice to govern some of the more commonly used and readily available unregulated cosmetic/beauty treatments such as dermabrasion and laser skin procedures.

21. The Committee recommends that the Department of Health conduct an investigation into non-hospital based colonic irrigation to determine the potential risks and benefits of the procedure and whether it should be restricted or regulated.

BACKGROUND TO THE INQUIRY

On Wednesday 20 June 2007, the House of Assembly, on a motion put forward by the Hon. Trish White MP, referred the matter of bogus, unregistered and deregistered health practitioners to the Social Development Committee for investigation. The reference was made pursuant to Section 16(1)(a) of the *Parliamentary Committees Act 1991*.

In advocating for an Inquiry to be conducted on this matter, the Hon. Trish White MP noted:

> There is an enormous number of health services provided by people who are not covered by a registration scheme. I believe that the majority of the people concerned are honest and competent. However, we do know that there are at least some who are anything but that and who care for nothing but making money out of vulnerable patients. While there has not been a large number of cases that have made the newspapers in South Australia, the fact is that we really do not know the extent of the problem but have had enough anecdotal suggestion of untoward operators here, as well as confirmed cases interstate and overseas, to warrant investigation of the situation here in South Australia.[6]

METHODOLOGY

On 16 February 2008, notices were placed in *The Advertiser* and *The Australian* to inform the public of the terms of reference for the Inquiry and to invite submissions. In addition, the Committee wrote to a number of individuals and organisations with an interest in the Inquiry inviting them to provide oral evidence or make a written submission. The Committee commenced hearing public evidence on 17 March 2008 and completed its hearings on 16 February 2009.

In total, 90 submissions were received, consisting of 73 written submissions and 17 oral presentations.

The Committee primarily relied upon the written submissions and oral evidence provided to address the issues contained in the terms of reference and to reach its final recommendations. For the most part, this report focuses on the broad issues and major themes about which the Committee received most comment.

Where necessary, additional literature was sourced to assist the Committee in its deliberations and facilitate the formulation of appropriate recommendations.

A list of submissions, including the names of those witnesses who gave oral evidence to the Committee, appears at the end of this report.

The Committee thanks all those who assisted with its Inquiry by providing written submissions, giving evidence and/or providing additional information when requested.

[6] Hon. Trish White, Hansard, House of Assembly, 20 June 2007.

SCOPE

The Inquiry's terms of reference required the Committee to investigate bogus, unregistered and deregistered health practitioners. These terms of reference initially caused some confusion among witnesses and, as such, require some clarification here.

Firstly, the Inquiry focused on unregistered health practitioners. While the Committee considers that the majority of unregistered health practitioners are reputable and perform an important and legitimate health service to consumers, evidence suggests that some unregistered health practitioners are poorly trained and unscrupulous. The Committee was particularly interested to learn whether unregistered health practitioners have appropriate standards of education and training and whether proper processes are in place to ensure consumers have adequate recourse in the event of poor treatment or serious harm.

The Inquiry primarily concentrated on individual practitioners who make extravagant claims that cannot be substantiated and who encourage unsuspecting consumers to spend significant amounts of money on so-called therapies which are, at best, ineffective and, at worst, dangerous.

The Committee was also required to examine the practices of deregistered health practitioners. The Committee notes that registered health practitioners who have been deregistered are not necessarily bogus and, in and of themselves, do not necessarily pose problems to health consumers. However, the Committee heard evidence of instances in which registered health practitioners had been deregistered for unethical or unprofessional conduct and who subsequently re-badged themselves so as to be able to practise in an unregulated area of health care. The Committee finds this situation unacceptable. It is of the strong view that any registered health practitioner who has been deregistered on disciplinary grounds should not be able to set up practice in another area of health care, without review.

Any investigation into registered health practitioners – that is, those individuals who are regulated by a statutory health body under a particular Act – was considered to be beyond the scope of this Inquiry. However, the Committee notes the concerns raised by some witnesses that conventional medicine is not without flaws and that some registered health professionals may not meet the agreed standards of their profession.

The Committee notes that numerous examples can be found where registered practitioners have not acted ethically or have violated proper standards of care.[7] Indeed, a number of recent high-profile cases involving registered medical practitioners who failed to meet proper standards of patient care have served to undermine community confidence in the health care system. While such cases are disturbing, the Committee notes that statutory mechanisms exist to investigate incompetent practice or unethical conduct by registered health practitioners. Those mechanisms can impose serious

[7] A report issued in 2008 by the Australian Commission on Safety and Quality in Health Care – established in 2006 to lead and coordinate national improvements in safety and quality – provides a disturbing picture of the current state of safety and quality across both the public and private health sectors. *See* Australian Commission on Safety and Quality in Health Care. Windows into Safety and Quality in Health Care 2008. Accessed 30 October 2008 at www.safetyandquality.gov.au/internet/safety/publishing.nsf/content/windows-into-safety-and-quality-in-health-care-2008/$File/ACSQHC_National%20Report.pdf (See page 88).

sanctions against such practitioners. In addition, the Committee notes that the Statutory Authorities Review Committee – a Standing Committee of the South Australian Parliament responsible for investigating the operations of statutory authorities – recently inquired into, and reported on, both the Nurses Board of South Australia and Medical Board of South Australia. The Committee considers that unregulated health practitioners are not held up to the same level of scrutiny.

By necessity, the role of complementary health care practitioners came under particular scrutiny during the Inquiry because this group represents a significant majority of unregistered health practitioners.

The Committee considers that questions regarding the scientific rigour of current research into complementary medicine were beyond the scope of the Inquiry. The Committee notes that while some therapies may have sound foundation, others lack a credible evidence base.[8] This report does not discuss in any detail the many different modalities of complementary therapies available to consumers nor does it enter into debate about the variations between Western medical practice and complementary health care. To do so would have moved the Inquiry well beyond its terms of reference. Nevertheless, the Committee notes that just as some people can be helped by conventional medicine so too can they obtain benefit from complementary therapies.

REPORT OUTLINE

This report is loosely aligned around the Inquiry's terms of reference. It is divided into six sections:

- Section 1 defines some key terms and reports on the outcomes of a number of previous inquiries.

- Section 2 concentrates on bogus unregistered health practitioners, their prevalence, the practices they use, their methods of promotion and the reasons consumers fall for their claims.

- Section 3 focuses on the specific complaints received as part of the Inquiry. It also considers the responses provided by the unregistered practitioners named as part of the Inquiry.

- Section 4 focuses on issues relating to deregistered health practitioners, including the capacity of consumers to access information about those practitioners who have been deregistered or had practise limitations placed upon them.

- Section 5 examines the adequacy of existing regulatory mechanisms to deal with complaints made against unregistered health practitioners. It also examines what measures could and should be taken to better protect the public from bogus practitioners.

[8] *See* United Kingdom House of Lords Select Committee on Science and Technology, 6th Report, *Complementary and Alternative Medicine*, London. Available at: www.parliament.the-stationery-office.co.uk/pa/ld199900/ldselect/ldsctech/123/12301.htm Accessed 20 May 2008.

- Section 6 briefly considers some examples of treatments practised by unregistered practitioners that are untested and potentially harmful. This section also highlights concerns raised about the changing medical landscape and the corporatisation of general practice.

The report also contains two appendices. An example of a university degree that can be purchased online is contained in Appendix 1. An example of misleading advertising material distributed by an unregistered practitioner operating in South Australia is provided in Appendix 2.

Recommendations appear throughout the report and are listed in full as part of the Executive Summary.

SECTION ONE: INTRODUCTION

Health services are delivered by a broad range of health practitioners. Some of these practitioners are registered under a system of statutory registration (e.g. doctors, dentists and nurses). Other health practitioners are not subject to any specific statutory law restrictions.

This first section of the report defines some key terms and considers the outcomes of previous inquiries. It also examines the some of the practices used by bogus health practitioners and the associated health and safety risks.

DEFINITIONS

Bogus

The Macquarie Dictionary defines *bogus* as 'counterfeit; spurious; sham.'[9] In the context of health care, the term can be defined as the deceitful promotion of goods and services which often includes unsubstantiated claims of health cures. Bogus practitioners are often driven by profit and prey on people when they are at their most vulnerable. They promote services or goods that are not scientifically accepted or proven. In many instances, bogus health practitioners have no formal health education or training.

In its written submission, the National Herbalists Association of Australia (NHAA) suggested that the motivations of bogus practitioners tend to fall into one of two categories:

- those who exploit the vulnerable in order to obtain financial gain; or
- those who prey on people for their own sexual gratification.

In the latter case, treatments used by bogus practitioners may involve 'therapies' that rely heavily on physical contact using massage or manipulation techniques.[10] According to NHAA, people who have fallen victim to such practitioners 'often require extended [psychological] treatment for the trauma they have suffered'.[11]

Registered health practitioner

In the context of this report, the term *registered health practitioner* refers to a health practitioner registered under a South Australian health registration Act.

Unregistered health practitioner

In the context of this report, the term *unregistered health practitioner* refers to any person who provides a health service and who is not registered under a South Australian health registration Act. Among others, the term covers naturopaths, herbalists, homeopaths, massage therapists, psychotherapists, counsellors, audiologists, speech pathologists and a range of other complementary and allied health practitioners.

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[9] Macquarie Dictionary, (fourth edition) 2006.

[10] National Herbalists Association of Australia, written submission, 2008 page 6.

[11] National Herbalists Association of Australia, written submission, 2008 page 7.

Deregistered health practitioner

In the context of this report, the term *deregistered health practitioner* refers to a health practitioner whose registration under a South Australian health registration Act has been cancelled or suspended as a result of disciplinary proceedings.

REGISTERED PRACTITIONERS

Health practitioner registration is the responsibility of state and territory governments. Statutory boards play an important role in establishing appropriate standards that must be met in order for health professionals to gain their registration and be able to practise in their particular field. Unlike health practitioners working in the broad range of unregistered health occupations, those individuals working in professions that fall under statutory regulation are legally bound to hold registration and can be prosecuted for practising without registration.

A statutory regulation system works by registering those who meet agreed standards of competence and restricting the use of specified titles to only those who are registered. In South Australia ten health professions are subject to statutory regulation (refer Table 1):

Table 1: Statutory regulation of health professions in South Australia

Profession	Act	Number of registered practitioners*
Chiropractic and Osteopathy	*Chiropractic and Osteopathy Practice Act 2005*	340 Chiropractors 27 Osteopaths
Dentistry	*Dental Practice Act 2001*	1637**
Medical	*Medical Practice Act 2004*	5902
Nursing	*Nurses Act 1999*	29 538
Occupational Therapy	*Occupational Therapy Act 2005*	858
Optometry	*Optometry Practice Act 2007*	266
Pharmacy	*Pharmacy Practice Act 2007*	1629
Physiotherapy	*Physiotherapy Practice Act 2005*	1700
Podiatry	*Podiatry Practice Act 2005*	320
Psychology	*Psychological Practices Act 1973*	1186

* Unless otherwise indicated, the numbers cited were sourced from the 2007/08 annual reports of the relevant statutory authority.

** Figures taken from the Dental Board of South Australia's Annual Report for 2006/07.

UNREGISTERED PRACTITIONERS

As mentioned, the term 'unregistered health practitioner' refers to an individual who provides health services in an area or areas that do not require registration. Many unregistered health care providers such as naturopaths, massage therapists and practitioners of Chinese medicine fall into the category of complementary medicine. Other unregistered health practitioners such as social workers, speech pathologists and dietitians fall into the broad category often referred to as allied health services.

People who work in the occupations that deliver various personal care services to people who are frail or have a disability – such as providing continence support, wound management or, in the context of health issues, support with everyday tasks (e.g. bathing, toileting and feeding) – also fall within the broad category of unregistered health workers.

They often work in association with a wide range of registered practitioners such as nurses and physiotherapists. The very nature of the work requires close contact with people who are vulnerable often because of their age, disability or illness.

According to Mr David Filby, Executive Director, Policy & Intergovernment Relations Division, Department of Health, those working as direct care workers in the health and community services sector probably constitute 'the largest group of unregistered health practitioners'.[12]

Mr Filby told the Inquiry that one of the main concerns about direct care workers related to varying standards of education. He told the Inquiry that while many of these workers have obtained certificates within the TAFE system, others do not have any relevant qualifications. Mr Filby also told the Inquiry that 'as a group, there is no requirement for [direct care workers] to be police checked, although individual employers may take up that arrangement.'[13]

The Committee considers that providers of personal care services need to be subject to police checks, appropriate standards of education and relevant oversight. If the support being offered involves health support the Committee considers that the support should also be covered by the framework for unregistered health professionals proposed in this report.

RECOMMENDATION

- The Committee recommends that the Minister for Health and the Minister for Disability investigate whether existing educational standards and police checks of direct care workers in the health and community services sectors are adequate.

[12] Mr David Filby, oral evidence, Committee Hansard, 2008 page 74.
[13] Mr David Filby, oral evidence, Committee Hansard, 2008 page 74.

Australian Bureau of Statistic (ABS) census figures (see Table 2) show a significant increase in both the number of complementary health practitioners and the number of consumers who consult them.[14]

According to the census, around 8,600 people worked as complementary health practitioners in 2006 in Australia. This number represents a significant increase – some 80% higher – than that reported a decade earlier.[15] In 2004-05, as part of the National Health Survey, 3.8% of the Australian population reported having consulted a complementary health practitioner in the previous two weeks, compared with around 2.8% in 1995.[16]

The ABS data also highlights significant variations in the levels of education attained by complementary health practitioners. As shown in Figure 1 (overleaf), a high proportion of chiropractors and osteopaths (around 90%) reported having a bachelor degree or higher qualification whereas naturopaths and homeopaths reported less than half that number (43%).[17]

Table 2: Number of Complementary Health Therapists in Australia in 2006

	1996	2001	2006	% change 1996-2006
Chiropractor*	1 711	2 073	2 488	45.4
Naturopath	1 910	2 514	2 982	56.1
Acupuncturist	460	675	948	106.1
Osteopath*	257	429	776	201.9
Traditional Chinese medicine practitioner	n.a.	n.a.	480	n.a.
Homeopath	n.a.	n.a.	236	n.a.
Total(a)	**4 787**	6 343	8 595	**79.5**

* While ABS data places chiropractors and osteopaths under complementary health therapists, it should be noted that both of these occupations are subject to statutory registration.

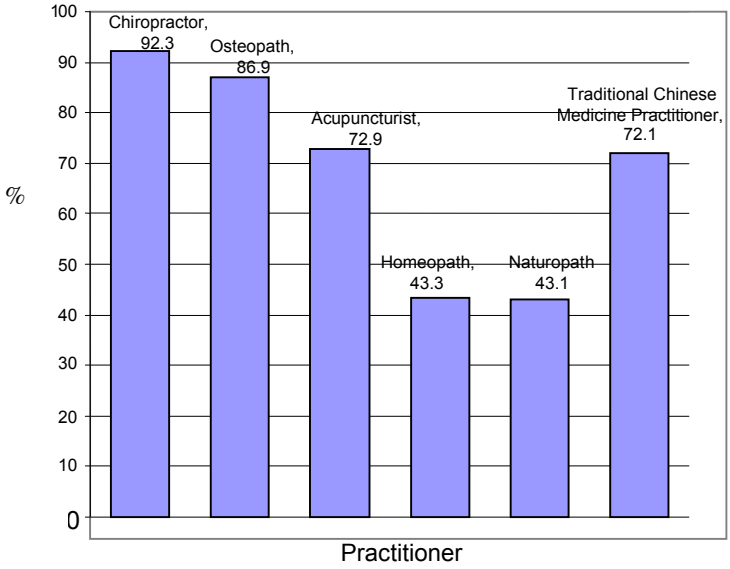
[14] ABS Cat. No. 4102.0 Australian Social Trends, 2008 (page 1): Complementary therapies accessed 24 July 2008 at www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4102.02008?OpenDocument

[15] The ABS reports that some of this increase was due to classification changes.

[16] ABS Cat. No. 4102.0 Australian Social Trends, 2008 (page 2): Complementary therapies accessed 24 July 2008 at www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4102.02008?OpenDocument

[17] ABS Cat. No. 4102.0 Australian Social Trends, 2008 (page 2): Complementary therapies accessed 24 July 2008 at www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4102.02008?OpenDocument

Figure 1: Education levels: % of Complementary Health Practitioners with a Bachelor Degree or Higher Qualification



The ABS data also reveals clear gender differences in the demography of complementary medicine practitioners. Women comprise the largest proportion of those practising naturopathy and homeopathy (nearly 80%). The higher proportion of women employed in these occupations is perhaps not surprising given that most reported working on a part-time basis.[18]

ISSUES RAISED

While the Committee notes that those health practitioners not covered by statutory registration form an important part of the overall health care system and are, for the most part, legitimate service providers, concerns about some aspects of this area of health care were raised during the Inquiry.

Variations in Standards

A number of witnesses raised concerns about the substantial variations in training and education that currently exist amongst providers of unregulated health care.

In its submission, the Counselling Association of South Australia (CASA) informed the Committee that, as things currently stand, anyone can set up a business as a counsellor or psychotherapist. Furthermore, CASA cited ABS census data which showed that of the total number of individuals who indentified themselves as counsellors or psychotherapists, less than one-quarter would be formally qualified to do so by CASA standards.[19]

[18] ABS Cat. No. 4102.0 Australian Social Trends, 2008: Complementary therapies accessed 24 July 2008 at www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4102.02008?OpenDocument

[19] Counselling Association of South Australia, written submission, 2008 page 1.

According to CASA:

> [This] clearly indicates the need for a regulatory body encompassing formal acknowledgement of the profession with appropriate standards, boundaries, guidelines and ethical codes.[20]

Ms Joy Anasta, Counsellor, CASA, told the Inquiry:

> As practitioners, we see a number of people every year who have had real emotional and psychological harm done to them by practitioners who do not know what they are doing, or who are not formally educated.[21]

Similarly, according to the National Herbalists Association of Australia, anyone can use the title of naturopath without necessarily acquiring any qualifications, knowledge or skills. The Committee notes that while some naturopathy courses are taught at university level others are taught through weekend workshops or in some cases, by correspondence. Qualifications (with broad variations in standards) are only required if a practitioner wishes to belong to a professional association, obtain insurance or health provider status. The Committee was told that while practising naturopathy without these may be inadvisable, it is certainly not illegal.[22]

This point was emphasised by Ms Helen Stevenson, Executive Board Member, National Herbalists Association of Australia:

> There is actually no requirement for any education whatsoever before you can call yourself a herbalist or a naturopath. Anyone can go out and say, 'I am a herbalist.' I told a friend this a couple of days ago, and she said, 'You mean that I could read a book and call myself a herbalist?' I said, 'Yes. You don't even have to read the book. Anyone can do it.' We think that is a serious problem.[23]

The apparent ease with which any individual can set themselves up as a naturopath or some other type of unregistered health practitioner without any formal qualifications or training is cause for concern and raises serious questions about the extent to which health consumers can depend on their knowledge and advice.[24]

Ms Judy James, Chief Executive Officer, Australian Acupuncture and Chinese Medicine Association, estimated that in South Australia there are currently 100 practitioners of acupuncture and Chinese herbal medicine. Of this estimated number, Ms James told the Inquiry that the Association considers that 'up to 50 per cent…are either unqualified or have had inadequate training.'[25] According to Ms James, a core part of traditional Chinese medicine training is to know how to deal with any adverse reactions to treatment and those practitioners who are unqualified or inadequately

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[20] Counselling Association of South Australia, written submission, 2008 page 1.

[21] Ms Joy Anasta, oral evidence, Committee Hansard, 2008 page 90.

[22] National Herbalists Association of Australia, PowerPoint presentation, oral evidence, Hansard 2008.

[23] Ms Helen Stevenson, oral evidence, Committee Hansard, 2008 page 38.

[24] Although naturopathy 'enjoyed a brief period of registration status in the Northern Territory' during the 1980s under the *Health Practitioners and Allied Professions Act 1985* (NT), the legislation was later repealed because 'it was deemed pointless' to have naturopaths registered in one jurisdiction while unregistered elsewhere in Australia. See Weir, Michael. Regulation of Complementary and Alternative Medicine Practitioners, in Regulating Health Practitioners, *Law in Context*, (editor Ian Freckelton), Volume 23, Number 2, 2006, Federation Press.

[25] Ms Judy James, oral evidence, Committee Hansard, 2008 page 19.

trained are ill-equipped to deal with such incidents and, as such, pose a serious risk to the public.[26]

A comprehensive Australian study into traditional Chinese medicine conducted in the mid 1990s found a significant link between adverse events and the length of education of the practitioner. Specifically, the study found that:

> practitioners graduating from extended traditional Chinese medicine education programs [experience] about half the adverse event rate of those practitioners who have graduated from short training programs.[27]

The study also observed that a significant variation in the standard and length of education courses had led to an 'unevenly qualified workforce'.[28]

Potential for Harm

The Australian Medical Association (SA) argued that while 'harm to the public from alternative practitioners can be difficult to prove'– as it is beyond the jurisdiction of any regulatory authorities – the potential for harm is nevertheless 'very real.'

> Often the anti-medical advice offered by unregistered health practitioners can encourage patients away from proven medical therapies.[29]

The Inquiry was informed that some consumers make the assumption—heavily influenced by clever advertising and marketing—that because a product is advertised as 'natural', it is without risk. This is certainly not the case. The Inquiry heard that not only can herbs be harmful on their own – causing toxicity, allergies and other idiosyncratic reactions – they can also interfere with prescribed medications and cause serious adverse reactions, even death. In relation to traditional Chinese medicine, it has been reported that this field may 'pose greater risks than some regulated health care practices' and traditional Chinese medicine practitioners will experience 'one adverse event every eight months' arising from either the ingestion of Chinese herbs leading to allergic reactions and/or the application of acupuncture leading to infection and physical injury.[30]

Beyond Prescribed Boundaries

The Committee notes that not all health practitioners who provide complementary or allied health services are unregistered. An increasing number of registered health professionals practise unregulated therapies. For example, the Committee was told that some general practitioners use complementary medicine together with conventional medicine.

Mr Raymond Khoury, Consultant, Australian Traditional Medicine Society, told the Committee:

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[26] Ms Judy James, oral evidence, Committee Hansard, 2008 page 20.

[27] Bensoussan A and Myers S. Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia, November 1996 page 5.

[28] Bensoussan A and Myers S. Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia, November 1996 page 3.

[29] AMA (SA) written submission, 2008 page 2.

[30] Bensoussan A and Myers S. Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia, November 1996 pages 4 and 5.

> As far as normal medicine goes [medical practitioners] are highly trained …but once they deviate and get into practices in which they are not trained then they are potentially dangerous; they do not know what they are doing.[31]

And further:

> Anyone who practices, for example, acupuncture needs to be properly trained. Anyone who undertakes acupuncture training needs four years, and within that four years they spend at least three months in a hospital in China. The [current] system is that registered practitioners, be they dentists, doctors, nurses, physiotherapists or optometrists, can do a weekend course in acupuncture and then legitimately claim to be an acupuncturist.[32]

In its submission, the Australian Dental Association, (SA Branch) indicated that it was aware of some instances of registered dentists operating well outside the prescribed boundaries of dentistry as defined by legislation:

> These dentists have entered into areas such as naturopathy, homeopathy and physiotherapy…In each of these cases, this carrying out of procedures or offering of advice inappropriate to being a dentist has been brought before the Dental Board and penalties and/or deregistration has occurred.[33]

Professional Associations

There are significant differences between statutory authorities and professional associations. The clear difference separating the two rests in the legal powers and responsibilities enshrined in legislation.

One major study into traditional Chinese medicine observed that a large number of traditional and Chinese medicine professional associations exist—twenty-three in total—with each representing various sections of the complementary medicine profession. Eligibility for membership varies significantly between the different associations with some 'accepting applicants who are 'interested' in using natural therapy in their clinical practice, to those associations that require over 2,500 hours of combined training in traditional Chinese medicine and western medicine'.[34] Moreover, the study found that not all traditional Chinese medicine professional associations have substantive procedures for recording adverse events, dealing with complaints or ensuring quality assurance processes are in place.[35]

A number of witnesses to the Inquiry discussed the problems associated with having a multiplicity of professional associations representing particular occupations. Membership to these associations is voluntary and the high number of associations generally means a broad range of qualifications will be accepted. In other words, there appears to be plenty of scope for an unregistered health practitioner to meet the standards of at least one professional association.

Mr Raymond Khoury, emphasised this point in his evidence:

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[31] Mr Raymond Khoury, oral evidence, Committee Hansard, 2008 page 82.

[32] Mr Raymond Khoury, oral evidence, Committee Hansard 2008 page 82.

[33] Australian Dental Association (SA Branch), written submission, 2008 page 1.

[34] Bensoussan A and Myers S. Towards a Safer Choice page 144.

[35] Bensoussan A and Myers S. Towards a Safer Choice page 144.

> One of the weaknesses of our occupation is that there are a large number of organisations (roughly about 40 nationally) and, unfortunately, much to our shame, I must say, there are different standards. Because of self-interest, each group gloats that theirs is the highest standard.[36]

In her evidence to the Inquiry Ms Shauna Ashewood, President, National Herbalists Association of Australia, highlighted further inadequacies in the current system of self-regulation:

> [A] practitioner who breached our code of ethics could go to another organisation. That organisation would not know that they had been expelled from our organisation, and they could set up practice with a provider number, having got membership of that new professional association. That is one of the problems with the current situation of self-regulation and the professional associations.[37]

If an unregistered practitioner chooses not to join a professional association there is even less opportunity for scrutiny and even less option for consumers to direct their complaints. In its written submission, the Australian Register of Homeopaths indicated that while it does receive a number of complaints each year, these complaints have not involved practitioners who are registered with AROH and, as such, the organisation has no authority to investigate the complaint. In all such cases, the Australian Register of Homeopaths indicated that it refers the complaint to the relevant state health authority and/or to the police.[38]

In November 2000, the House of Lords Select Committee on Science and Technology tabled its report on Complementary and Alternative Medicine (6th Report) in the United Kingdom Parliament. Among its recommendations, the Committee called for the consolidation of the numerous professional bodies that represent the particular groupings of complementary medicine practitioners. According to the report, if each therapy organised itself under a single professional body, 'patients could then have a single, reliable point of reference for standards, and would be protected against the risk of poorly-trained practitioners and have redress for poor service.'[39]

PREVIOUS INQUIRIES

Over the past decade or so, numerous reports and discussion papers have been produced that have examined the issue of unregistered health practitioners. Many previous inquiries have raised issues relating to the variability of regulation across jurisdictions and also the differing levels of education and training of unregistered health practitioners. While not an exhaustive list, the following provides an overview of the range of the reports brought to the Committee's attention during the course of its Inquiry and indicates that the issue of unregistered health practitioners has been the subject of investigation in numerous jurisdictions over a period of many years:

Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia, 1996**,** issued by the Victorian Department of Human Services, the Southern Cross

[36] Mr Raymond Khoury, oral evidence, Committee Hansard, 2008 page 80.

[37] Ms Shauna Ashewood, oral evidence, Committee Hanasard, 2008 page 41.

[38] Australian Register of Homeopaths, written submission, 2008 pages unnumbered.

[39] See recommendation 7, House of Lords Select Committee on Science and Technology the tabled its report on Complementary and Alternative Medicine (6th Report) in the United Kingdom Parliament at www.parliament.the-stationery-office.co.uk/pa/ld199900/ldselect/ldsctech/123/12322.htm accessed 20 May 2008.

University and the University of Western Sydney was one of the first reports to provide a comprehensive view of the practice of traditional Chinese medicine in Australia. This report examined a number of key areas including:

- the regulatory frameworks that exist across Australia and in some overseas jurisdictions,
- a profile of the traditional Chinese medicine workforce in Victoria, New South Wales, and Queensland including professional organisations,
- a profile of consumers who use traditional Chinese medicine,
- an analysis of the risks and benefits of traditional Chinese medicine, and
- the nature of traditional Chinese medicine education in Australia.

The report found that from the mid 1980s there had been a proliferation of complementary health practitioners, training courses and professional associations. Moreover, the report noted that considerable inconsistency existed in educational training and standards and that the increase in the number of professional groups compounded these inconsistencies.
The researchers recommended the introduction of statutory occupational regulation in the form of a restriction of title. According to the researchers, the main aim of this recommendation was to 'introduce minimal, yet sufficient, regulation to ensure adequate public safety and to cause the least anti-competitive effect in the health care marketplace'.[40]

In 1998, the New South Wales Joint Parliamentary Committee on the Health Care Complaints Commission commenced an inquiry into unregistered health practitioners with particular emphasis on determining whether existing complaints mechanisms offer consumers an effective system of recourse. The Committee's report, published in 1999, recommended that the New South Wales Health Care Complaints Commission's powers be strengthened to address unprofessional conduct by unregistered health practitioners and that it play a more active consumer educative role in relation to unregistered health services. The report also recommended that there be an investigation into:

> [the] feasibility of establishing umbrella legislation to cover unregistered health care practitioners which establishes a generic form of registration, generic complaint and disciplinary mechanisms, a uniform code of conduct, entry criteria agreed amongst the relevant professions and an Advisory Board to the Minister.[41]

In September 2002, the New South Wales Department of Health released a *Discussion Paper on the Regulation of Complementary Health Practitioners* to facilitate discussion on the need to regulate the complementary health sector particularly those parts of the sector that pose actual risk to the public. The Discussion Paper not only sought

[40] Bensoussan A and Myers S. Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia, November 1996 page ii.
[41] NSW Joint Committee on Health Care Complaints Commission, Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints – Final report, 1998 page 6 (recommendation no.5).

comment about the need for greater regulation but also put forward the various regulatory models that could be used to better control this area of health care.

In June 2005, increasing concerns about the serious risks posed by traditional Chinese medicine prompted the West Australian Department of Health to release a discussion paper entitled: *Regulation of Practitioners of Chinese Medicine in Western Australia.* The discussion paper noted the growing acceptance of complementary and alternative medicine and reported that around 60% of Australians access some form of complementary health services and/or medicines. The paper outlined the push to have greater regulation of some aspects of complementary medicine. It identified a range of regulatory options for complementary health practitioners and proposed a model of statutory regulation – including protection of title and controls on prescribing and dispensing rights for restricted herbs – specifically targeting three modalities: Chinese herbal medicine practitioners, acupuncturists and Chinese herbal dispensers.

Committee Comment

The Committee notes that in South Australia, and across Australia, there are a number of professional bodies representing a range of complementary health care practitioners. The education standards and accreditation of these bodies vary considerably. The Committee accepts that some professional associations are more active than others in establishing codes of conduct and implementing continuing professional education programs. However, the Committee would like to see a consolidation of the professional associations representing the range of unregistered health practitioners.

RECOMMENDATIONS

- The Committee recommends that the Minister for Health strongly encourage the professional associations representing the range of complementary health occupations to develop clear professional structures and standards in line with Recommendation 1 of this report (*see* page 5, Executive Summary).

- The Committee recommends that the Minister for Health strongly encourage the plethora of professional associations currently representing the range of complementary health occupations to consolidate their operations wherever possible.

SECTION TWO: BOGUS UNREGISTERED HEALTH PRACTITIONERS

While most unregistered health practitioners play an important role in the overall health care system, the absence of a sound regulatory framework makes it possible for bogus unregistered practitioners to set up practice with little to no legislative oversight. This section considers the prevalence of bogus unregistered health practitioners and looks at some of their practices and methods of promotion. It also examines the associated health and safety risks.

PREVALENCE

The Inquiry heard that it is not possible to obtain reliable data on the number of bogus unregistered practitioners operating in South Australia.

In its written submission, the Australian Natural Therapists Association (ANTA) cited the statistics of the state bodies that handle health complaints, to argue that traditional medicine and natural therapists account for around 0.05% of health care complaints received.[42] However, a number of other submissions drew attention to the unwillingness of many individuals who have fallen victim to bogus practitioners to come forward for fear of embarrassment or further distress. Arguably such reticence could lead to the under-reporting of problems and inappropriate practices.

In attempting to ascertain the extent of the problem, the Committee considered evidence from a number of existing complaints bodies.

The Committee asked the office of the South Australian Health and Community Services Complaints Commissioner (HCSCC) – an independent statutory body – for information on the level and nature of any complaints it had received.

Since its inception in 2005, the HCSCC has handled over 2200 complaints.[43] Of those, only three complaints involved bogus health practitioners. According to Ms Leena Sudano, Health and Community Services Complaints Commissioner, those particular complaints involved a variety of practices including:

- ozone therapy administered vaginally and rectally,
- dietary regimes,
- dietary supplements, and
- cessation of conventional medical cancer treatments and palliative care.[44]

In all three cases, consumers had been promised miracle cures for serious medical illnesses. All three were subjected to unorthodox and unproven treatments. The Inquiry heard that significant amounts of money were extracted from these individuals, payment was required up-front and no receipts issued.[45]

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[42] Australian Natural Therapists Association, written submission (cover letter), 2008, pages unnumbered.

[43] Extract from HCSCC Annual Report 2006-2007 - provided by Ms Leena Sudano, 2008.

[44] Health and Community Services Complaints Commission, written submission, 17 March 2008 page 1.

[45] Health and Community Services Complaints Commissioner , Annual Report 2006-2007, page 29.

The low number of complaints received by the HCSCC prompted the Committee to consider whether consumers may have used other complaints mechanisms. Accordingly, the Committee wrote to the South Australian Ombudsman, Mr Ken Macpherson, to ascertain whether any complaints were received about bogus health practitioners.[46] In his response, the Ombudsman advised that since the establishment of the Health and Community Services Complaints Commissioner, his office had 'virtually dealt with no complaints against health practitioners.'[47] The Ombudsman further stated that staff working within the Ombudsman SA Office did 'not know of any complaints against unregistered health practitioners.'[48]

The Committee also contacted the Office of Business and Consumer Affairs (OCBA) to ascertain if it received complaints about bogus health practitioners. In reply, OCBA indicated that it had received six consumer complaints in relation to impotency medication services in the last 12 months. According to OCBA, these complaints were 'relatively minor medical related matters' and 'would not fall under the category of bogus or unregistered practitioner complaints.'[49] OCBA also noted that most of the medical-related complaints that it received were referred to the Australian Medical Association or the Medical Board of South Australia.[50]

The Committee was also advised that the Department of Health has some legislative responsibility to oversee aspects of health care undertaken by unregistered health practitioners (for example, under provisions established by the *Public and Environmental Health Act 1987* SA). The Committee asked the Department whether it kept track of any complaints it received about bogus practitioners and whether the extent of bogus practitioners operating in South Australia was known. In evidence to the Committee, Mr David Filby, Executive Director, Policy & Intergovernment Relations Division, Department of Health, told the Inquiry that he did not have any information about the number of bogus practitioners operating in this State.[51]

The Committee considers that, in the first instance, health consumers may direct their complaints about bogus health practitioners to the Department of Health. As such, it considers that the Department should keep a proper track of and monitor any complaints it receives and ensure they are appropriately referred to the relevant authorities.

RECOMMENDATION:

- The Committee recommends that the Department of Health establish a mechanism to ensure that any complaints it receives about bogus health practitioners are properly recorded, monitored and referred to the relevant authorities.

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[46] The South Australian Ombudsman is an independent officer charged with investigating complaints against government departments and local government councils.

[47] Ombudsman South Australia, written submission, 2008 pages 1 and 3.

[48] Ombudsman South Australia, written submission, 2008 page 3.

[49] Office of Consumer and Business Affairs, written submission, 2008 page 2.

[50] Office of Consumer and Business Affairs, written submission, 2008 page 2.

[51] Mr David Filby, oral evidence, Hansard 2008 page 76.

In its written submission, the Australian Dental Association (SA Branch) suggested that there was little opportunity for people to practise as dentists without being suitably qualified and properly registered. In this context, the Association stated that it 'does not believe that unregistered or deregistered health practitioners are much of a problem'.[52]

In its written submission to the Inquiry, the Physiotherapy Board of South Australia stated that its interactions with bogus practitioners had been limited to rare occurrences in which a person had promoted themselves as a physiotherapist even though they were not registered with the Board. The Board noted that the *Physiotherapists Practice Act 2005* does not provide it with any powers to discipline unregistered persons. Accordingly, in the aforementioned situations, the Board stated that it had been required to investigate and lay a complaint through the appropriate court and that:

> this presents some practical problems particularly in relation to the gathering of sufficient evidence to support any court action by the Board where it is the word of one witness against the person concerned.[53]

METHODS AND PRACTICES

The Committee understands that in an effort to secure and retain clients, bogus practitioners commonly:

- use false or misleading advertising,
- provide poor clinical advice, and
- display deceptive credentials.[54]

False or Misleading Advertising

The use of false or misleading advertising by a bogus practitioner is exemplified by the case of Mr Jeffrey Dummett. In a written submission to the Inquiry, the Australian Traditional Medicine Society stated that Mr Dummett – also known as Jeremiah Hunter – had:

> engaged in extensive full colour advertisements with the claim that he could 'cure' almost all illnesses. Moreover, his advertising which gave the impression that he was a medical doctor also publicised a 'live blood analysis gadget' that could detect illnesses that medical pathology tests could not.[55]

The Society noted that while Mr Dummett's advertising claims had led the New South Wales Office of Fair Trading to prosecute him in the Lismore court for breaches of the *Fair Trading Act 1987* (NSW), and Mr Dummett had been ordered to pay $39,950 in fines and costs, he had nevertheless continued to practise in Sydney using essentially the same advertising literature.[56]

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[52] Australian Dental Association (SA Branch), written submission, 2008 page 1.

[53] Physiotherapy Board of South Australia, 2008 page 1.

[54] Australian Traditional Medicine Society, written submission, 2008 page 16.

[55] Australian Traditional Medicine Society, written submission, 2008 page 16.

[56] Australian Traditional Medicine Society, written submission, 2008 page 16.

In the course of the Inquiry, the Committee heard direct evidence about an unregistered practitioner using misleading advertising to recruit clients in South Australia (*See Appendix 2).* The Committee notes that while there are laws that prohibit false and misleading advertising it can be difficult to prevent such advertising material from being distributed either manually, via letterbox drops, or electronically on the internet or through the use of email. Nevertheless, the Committee considers that the government should continue to monitor this issue and take further steps to help consumers identify and formally complain about false and misleading advertising.

RECOMMENDATION

- The Committee recommends that the Office of Consumer and Business Affairs, in conjunction with the Department of Health, continue to monitor instances of false and misleading advertising by health practitioners and develop further strategies to help consumers identify and lodge formal complaints about such advertising.

Dangerous Clinical Advice

The use of dangerous clinical advice by a bogus practitioner can be illustrated by the case of Mr Paul Perrett. According to the Australian Traditional Medicine Society, Mr Perrett had:

> put a number of lives at risk by advising his patients against undertaking conventional cancer treatments such as chemotherapy, radiotherapy, X rays and CT scans. For example, one of Perrett's patients had a sarcoma. Perrett dissuaded her from conventional medical treatment, and charged her $20,000 for bogus treatments.[57]

Similarly, in its written submission, the National Herbalists Association of Australia (NHAA) emphasised the inherent risks associated with bogus practitioners who have no clinical knowledge or training and who either misdiagnose serious medical conditions or delay treatment which in the case of life threatening disease can be 'catastrophic'.[58]

Deceptive Credentials

The Committee understands that bogus practitioners commonly display deceptive or misleading credentials. For example, in a case cited by the Australian Traditional Medicine Society, Mr Jeffrey Dummett had used the title of 'Dr' and claimed that he held a Doctorate of Science (DSc) and a Doctorate of Philosophy (PhD). The New South Wales' Office of Fair Trading subsequently had Mr Dummett banned from using these titles which were found to have been obtained from dubious sources.[59]

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[57] Australian Traditional Medicine Society, written submission, 2008 page 17.

[58] National Herbalists Association of Australia, written submission, 2008 page 8.

[59] *See* media release: Alternative health provider banned for life, New South Wales Office of Fair Trading 3 April 2008 accessed online 14 January 2009 at www.fairtrading.nsw.gov.au/About_us/News_and_events/Media_releases/2008_media_releases/20080403_alternative_health_provider_banned_for_life.html

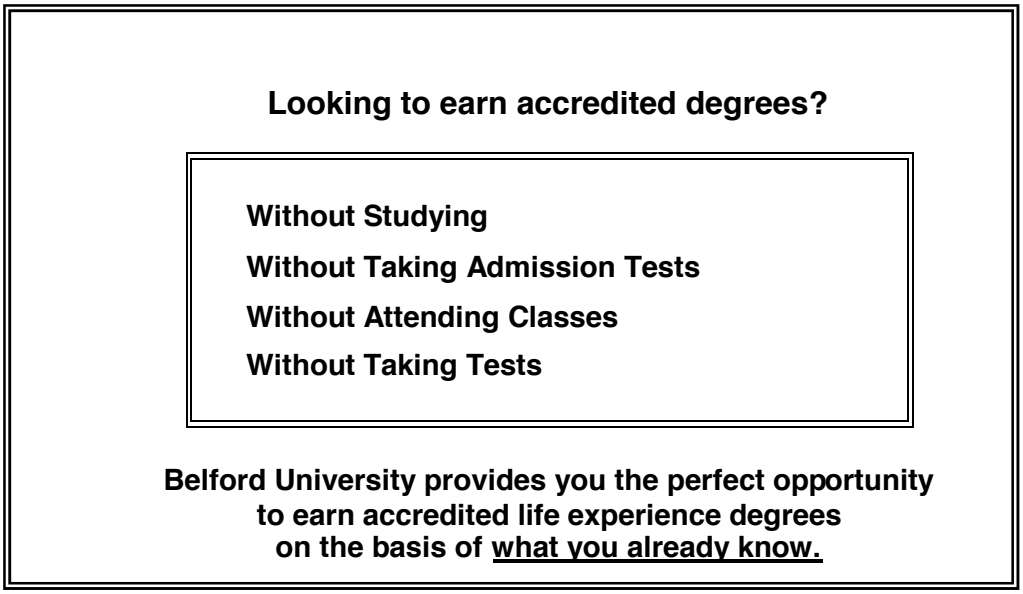
The Committee is aware of a number of websites that award 'academic degrees' based on 'life experience' and promise 'hassle-free' delivery of bachelors, masters and doctorate-level degrees in a variety of subjects.

Many of these websites use catchy slogans – such as 'earn a degree for what you already know' – and assure prospective clients that volunteer activities, hobbies, military training, attendance at workshops and even independent reading, listening or writing are all considered legitimate qualifications by which a degree can be obtained. The purchase price for these degrees varies and usually depends on whether an undergraduate bachelor degree or postgraduate degree is sought. Special package deals are also offered. For example, on one website that the Committee sighted, customers were able to purchase a high school diploma, a bachelor's degree and a master's degree for a combined, discounted price of US$1083. Purchased separately these qualifications cost $249, $449 and $479 respectively. For an additional fee, an academic transcript can be issued.[60]

Websites offering these degrees typically claim to be 'fully accredited' and contain testimonials from satisfied customers claiming that they have obtained high-paying employment as a result of their 'degree'. Prospective buyers of these degrees are even offered a 100% refund if their application is not accepted.

The Committee received evidence that an unregistered practitioner operating in South Australia had obtained her Doctoral 'degree' from Belford University.[61] The following advertising (Figure 2) is taken from that organisation's website:[62]

Figure 2: Example of advertising material on Belford University's website



In similar fashion, the Progressive Universal Life Church website offers PhDs in Herbology and Homopathy (sic) for US$195.00 (*See Appendix 1)*.[63]

[60] Belford University www.belforduniversity.org/university/fee.asp accessed online 20 January 2009.

[61] Health and Community Services Complaints Commission, second appearance, evidence in camera, 2008.

[62] *See* Belford University at www.belforduniversity.org/ accessed 16 October 2008.

Use of title 'Dr'

During the Inquiry, some concerns were raised about the use of the title 'doctor' and its abbreviated prefix 'Dr'. The Committee notes that while the term is most often associated with those who hold a medical degree or those who have completed doctoral degrees, the title is not a restricted one and is used by a range of other professions including dentists, chiropractors and veterinarians. Universities also award honorary doctorates to individuals who have made a significant contribution to the community.

The Committee is concerned that an expanding number of practitioners are now using the title 'Dr' and that the use of this title by some practitioners gives the impression that they hold medical qualifications when this is not the case. While not wishing to enter into the debate, at this time, about which professional groups should have the right to use the title 'Dr', the Committee notes that the widespread use of the title can and does cause confusion to health consumers. The Committee considers that those individuals who use the title 'Dr' need to be mindful of the context in which it is used and ensure that the broader community is not misled in any way. The Committee considers that this issue requires monitoring and warrants further examination.

During evidence presented by representatives of the Medical Board of South Australia, the Committee raised a hypothetical example wherein a person holding a doctorate that was not related in any way to medicine might be employed as a pharmaceutical sales representative. The Committee was concerned that in such a situation the general public might erroneously conclude that the person was a medically-qualified doctor. Mr Bradley Williams, Manager, Professional Conduct Services, Medical Board of South Australia, responded by highlighting some of the complexities relating to such an instance:

> … you would have to look at what does the reasonable person think… whilst one person who is dealing with them might subjectively believe that this person is a medical practitioner, you would have to look at it in the broader context, judged objectively—and it would be judged by the courts, I guess, as to what the objective standard would be.[64]

Mr Joe Hooper, Registrar and Chief Executive Officer, Medical Board of South Australia, told the Committee that the Medical Board would only investigate such instances 'where there is some reasonable evidence that the person is using their doctorate or their title to infer that they hold a medical degree.'[65]

The Committee was particularly concerned about those practitioners that may have had legitimate claim to the title but have since been deregistered. According to Dr Donald Wilson, Acting President, Dental Board (SA), if a dentist is removed from the register it is 'likely that the [Dental Board] would write to them and tell them to stop using the title [Dr].'[66] In a similar vein, the Medical Board of South Australia told the Inquiry that 'once a doctor is removed from the register,' it addressed 'all mail to that person as Mr, Mrs or Ms.'[67]

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[63] *See* www.pulc.com/degreecourses.php accessed online 12 January 2009.

[64] Mr Bradley Williams, oral evidence, Committee Hansard, 2008 page 60.

[65] Mr Joe Hooper, oral evidence, Committee Hansard, 2008 page 60.

[66] Dr Donald Wilson, oral evidence, Committee Hansard 2008 page 106.

[67] Mr Joe Hooper, oral evidence, Committee Hansard, 2008 page 59.

The Committee notes that while such responses from statutory authorities can be effective, they do not necessarily prevent individuals from continuing to use the doctor title.

Methods of Promotion

According to the Australian Register of Homeopaths, bogus health practitioners often promote their services in ways that are designed to exploit people's fear of illness and take full advantage when they are suffering from a diagnosed terminal illness:

> It is often staggering the lengths people will go to and the money they will spend in search of a cure.[68]

According to the evidence received, word-of-mouth seems to be a common method used by bogus practitioners to promote their services. In addition, testimonials – personal statements espousing the benefits of a particular therapy or product – are put forward as a way of convincing unsuspecting consumers. Of course, only those testimonials that provide a positive account are put forward as evidence of effective treatment. In some cases the testimonials have a similar ring to them; suggesting that they may have been composed by the same person. Moreover, only scant details about the supposed writer are offered (e.g. 'John & Mary, Adelaide Hills') thereby making it all but impossible for the information to be verified.

The Committee notes that health consumers need to be mindful that testimonials are marketing tools and should not be interpreted as evidence of treatment efficacy.[69]

Dr Donald Wilson, Acting President, Dental Board of South Australia, agreed that greater public awareness about the efficacy or otherwise of various therapies was needed and suggested that there should be some mechanism put in place to enable those most vulnerable to exploitation to better differentiate between 'consensus science where there is a weight of evidence supporting something as opposed to practitioners who work off hunches and networks of treatment.'[70]

Mr David Filby, Executive Director, Policy & Intergovernment Relations Division, Department of Health, explained some of the challenges associated with ensuring those who are most vulnerable to exploitation by unscrupulous health practitioners are protected:

> [I]n the same way as people are recruited into these arrangements by word of mouth, it is almost like the information has to get around in the same set of circles, because putting it on the government website will not reach people in that circumstance.[71]

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[68] Australian Register of Homeopaths, written submission, 2008 pages unnumbered.

[69] The Committee notes that all sorts of companies use testimonials as marketing tools. However, if they are not willing to provide full contact details of the individuals featured in the testimonials, people should be very wary.

[70] Dr Donald Wilson, oral evidence, Committee Hansard, 2008 page 104.

[71] Mr David Filby, oral evidence, Committee Hansard, 2008 page 77.

Warning signs and why people fall for bogus claims

The Inquiry heard that there are a number of reasons why some people may be more susceptible than others to bogus practitioners. The Committee was told of a number of cases in which people with serious health problems were drawn to promises of miraculous cures by those claiming to be legitimate health care providers. In three cases examined by the Health and Community Services Complaints Commissioner, the exploitation of each individual occurred in a context of terminal illness.[72] Indeed, the Committee recognises that in instances where conventional medical treatment is ineffective individuals are far more likely to look to other forms of treatment.

There are a number of warning signs that, if observed, can help identify potential bogus health products and practitioners.[73] These include that:

- the product or therapy is advertised as a quick fix for a wide range of ailments ranging from minor health problems (such as the common cold) to more serious and potentially life-threatening illnesses such as cancer.
- the promoters of products and therapies use terms like 'scientific breakthrough', 'miracle cure', or make statements such as 'this product will rid your body of all toxins and strengthen your immune system'.
- the language promoting bogus treatments and products endeavours to 'blind people with science'.
- the promoter claims that there has been a 'conspiracy of silence', with the government and medical profession deliberately stymieing the 'miracle cure' to prevent a substantial loss of profit.
- the inclusion of anecdotal evidence in advertisements, usually in the form of testimonials, without any genuine proof of efficacy.
- a display of numerous impressive looking parchments from universities that either do not exist or that offer qualifications which can easily be purchased online without the individual having undertaken any reputable academic training.
- the product on offer is advertised as 'exclusive' and, therefore, only available from one source.

The 'Effectiveness' of Bogus Treatments

It has been suggested that there are at least seven reasons[74] why people wrongly assume that a bogus treatment has been effective:

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[72] Health and Community Services Complaints Commission, written submission, 17 March 2008 page 1.

[73] Information adapted from Barrett, S and Herbert V, Twenty-five ways to spot quacks and vitamin pushers accessed online 21 July 2008 at www.quackwatch.com/01QuackeryRelatedTopics/spotquack.html and additional information found on the Skeptic's Dictionary website at www.skepdic.com/althelth.html

[74] Adapted from an article written by Barry L. Beyerstein entitled: Why Bogus Therapies Often Seem to Work, accessed online Accessed 15 May 2008 at www.quackwatch.com/01QuackeryRelatedTopics/altbelief.html

1. The disease had run its natural course at the time that the bogus treatment was provided.

2. Many diseases are cyclical and, as such, symptoms of the disease will fluctuate making some people believe that a bogus treatment has been effective.

3. The placebo effect: the bogus treatment 'works' because the patient wants it to work.

4. People who hedge their bets credit the wrong thing. If improvement occurs after someone has had both 'alternative' and 'science-based treatment', the alternative practice may get a disproportionate share of the credit.

5. The original diagnosis or prognosis was incorrect.

6. Temporary mood improvement is misinterpreted as a 'cure.' Such a short-term improvement may be a result of a practitioner's charismatic personality and powers of persuasion.

7. The psychological needs of an individual can distort what they perceive and do. Even when no objective improvement occurs, 'true believers' in alternative medicine can convince themselves they have been helped.

This latter point was emphasized in a written submission provided by the Counselling Association of South Australia which suggested that clients may, in all innocence, 'facilitate' bogus practitioners:

> Frequently clients are desperate to be heard, and to feel a sense of connection. If the practitioners show empathy and concern, clients may reciprocate with trust in a parent-child style of relationship, consequentially surrendering power as they respond to the intimacy of the relationship.[75]

Committee Comment

The Committee is concerned that some health consumers are not able to differentiate between credible health claims and those that are exaggerated and/or unsubstantiated. It notes that the volume of information available on the internet about a broad range of health topics is boundless. Furthermore, the Committee notes that the increasing use of the internet is both an opportunity and a risk for health consumers. While consumers can access more information, it can be difficult for them to gauge the quality and accuracy of that information. Indeed, at present, anyone can set up a website and publish health-related information without any accountability or editorial oversight.

The Inquiry is also concerned that bogus practitioners may display dubious credentials, in some cases purchased from questionable online universities, to dupe consumers into thinking they are appropriately qualified.

[75] Counselling Association of South Australia, written submission 2008 page 2.

RECOMMENDATIONS

- The Committee recommends that the Minister for Health, in conjunction with relevant stakeholders, identify ways to ensure health consumers, particularly those most vulnerable to exploitation by bogus health practitioners, are able to differentiate between credible health claims and those that are exaggerated and/or unsubstantiated to enable them to make informed choices.

- The Committee recommends that, in conjunction with the proclamation of any new legislation regulating unregistered health practitioners, the Minister for Health ensure a concerted effort is made to increase community awareness of both continuing and new health complaints mechanisms. The Committee further recommends that prior to the proclamation of any new legislation, the Minister for Health take steps to increase community awareness of existing statutory health complaints processes.

- The Committee recommends that the Department of Health work more effectively with the media to ensure that the promotion and advertising of dubious health products and treatments is minimised, and health reporting is accurate.

- The Committee recommends that, as part of the introduction of a stricter legislative framework, the Department of Health ensure that all registered and unregistered health practitioners are required to publicly display legitimate and properly accredited qualifications at their central place of employment at all times and are prohibited from displaying unaccredited qualifications.

SECTION THREE: SPECIFIC COMPLAINTS RECEIVED

During the course of the Inquiry, the Committee received specific complaints about four unregistered health practitioners operating in South Australia. They are:

- Ms Elvira Brunt,
- Ms Elizabeth Goldway,
- Ms Monika Milka, and
- Mr Lubomir Batelka.

The Committee wrote to all four practitioners inviting them to respond to the allegations and discuss the specific treatments they provide. What follows are a number of written complaints drawn directly from the evidence provided to the Inquiry about the work of these unregistered practitioners. In some cases, certain information—including names—has been amended to protect the privacy of the persons involved. Others quote directly from submissions received. While some editorial changes have been made for the sake of clarity and brevity, these changes have not altered the substantive content.

COMPLAINTS AGAINST MS ELVIRA BRUNT

A number of witnesses who provided written submissions to the Inquiry alleged that Ms Elvira Brunt had:

- claimed that she was able to cure cancer,
- encouraged patients to cease conventional medical treatment,
- required cash payments, and
- failed to provide receipts for payment provided.

Letter of Complaint: Example 1

In 1996, my wife was diagnosed with incurable and inoperable cancer in the lymph nodes. Because my wife had been given a 'death sentence' by her oncologist, she was prepared to try almost anything. A friend of ours told us about a 'natural healer': Elvira.

Elvira told my wife that she could cure her. According to Elvira, my wife was suffering from a blood problem which could be 'fixed'. Elvira told my wife she would reverse the circulation of her blood and get rid of the cancer causing toxins. Her treatment consisted of making a fist with one hand and pressing it into my wife's stomach and navel areas until the 'blood circulation reversed'.

Before this treatment took place, the receptionist instructed us to place $80 in cash, under a plate, which was located in the treatment room.

Written submission: Mr A O'Connor

Letter of Complaint: Example 2

In 2003, my son was diagnosed with myelodysplasia – a type of leukaemia. His prognosis was grim. While continuing with conventional medical treatment in the hospital system, my son also sought help from a number of alternative health practitioners including Elvira. My son visited Elvira many times, but it was only in the later months of his disease that I accompanied him, and so witnessed what was actually occurring during these appointments.

The treatment consisted of Elvira 'digging' into my son's abdominal cavity, so that he was in agony – this was to 'break up the cancer' and renew his blood system. He had to follow a strict diet, with meat included, to boost the red blood cells. If Elvira was busy, her mother would take over the treatment.

The cost of an appointment was astronomical, up to $150 or more a session, all in cash.

Written submission: Ms S Bates

Letter of Complaint: Example 3

My husband was diagnosed with terminal lung cancer and was given six weeks to live. Out of desperation he was prepared to undergo any treatment in the hope that it might help him.

At our first appointment with Elvira, she promised she could cure him. However, in order for my husband to be treated, Elvira required him to come off all the medication he was taking. He suffered unbearable pain. Elvira did not allow me to be in the room when she treated him. At times we waited up to six hours to see her. We saw Elvira three times per week over a period of five weeks. We paid $180 per visit in cash and were never issued a receipt.

Written submission: Ms R Logozzo

Letter of Complaint: Example 4

My brother, Martin, died of bowel and liver cancer in 2003 at the age of 45 and at that time he had been seeing Elvira for about 4 months. The 'treatments' from Elvira cost about $130, and consisted of a 20 or 30-minute massage by one of her employees then a 5 or 10-minute consultation during which Elvira put her thumb in his navel and described how she could feel the tumours shrinking or moving. During the massage sessions Elvira's employees would relate stories of people who had been 'much sicker than you are Martin' but had been cured by Elvira.

Written submission: Ms K Eatts

Not all of the submissions received were critical of the treatment provided by Ms Brunt. The Committee received a total of 12 submissions offering positive statements about her work. The Committee notes that most of the letters in support of Ms Brunt came from individuals living in Victoria. Presented below are three examples of these letters of support.

Letter of Support: Example 1

My family has been treated by Elvira for the last ten years and in my experience she has never stopped us from receiving conventional treatment. We have found her supportive in all aspects. We found Elvira very supportive in offering advice and thanks to her my wife is now fully recovered.

Written submission: Mr A Del Moro

Letter of Support: Example 2

I have been a patient of Elvira's for the past six years. During this time she has been supportive and has always encouraged me and my family to receive conventional treatment. Elvira has devoted and sacrificed her whole life in helping people and does not in any way mislead you as a patient or push you to make choices when you are at your most vulnerable.

Written submission: Ms D Franceschini

Letter of Support: Example 3

I have been a patient at Elvira's clinic for over two and a half years. I travel a long way to come to the clinic. I am a cancer patient and have been undergoing conventional medical treatment at a hospital in Melbourne all this time, and the treatments I have received at Elvira's clinic have been complementary to my medical treatment.

I have never been advised to discontinue my medical treatment by Ms Brunt, nor did I expect to be. I have never been led to think that she has a magic cure, but the treatment has been very helpful to me.

Written submission: Ms N Volovich

RESPONSE FROM MS ELVIRA BRUNT

The Committee received written correspondence from Ms Elvira Brunt. In her response, Ms Brunt stated:

> I have never solicited clients, using the term 'Dr' or any other term. All of my clients, past and present, have been referred to me by word of mouth. Some of my clients have been coming to me for more than 20 years…Medical professionals send clients to me. I encourage clients to go to registered General Practitioners. I count amongst my clients members of the medical profession. I have never, at any time, claimed to be a registered medical practitioner. My practice involves individuals being massaged and the external manipulation of their abdominal region with my hands. I do not use any machines, devices or invasive techniques.
>
> I only use Nivea cream and high-grade pharmaceutical oil to massage…I currently charge up to $180 dollars per adult but many clients are massaged for far less than this and in some instances a number of people do not pay at all.
>
> All of my clients are informed up front of my fee and that no portion of that fee can be claimed from Medicare or through private health insurance. Fravira Clinic only accepts cash or cheque as it does not have the facilities to process electronic funds transfers or credit cards. Receipts are provided upon request.
>
> I have always encouraged my clients to maintain their relationships with their General Practitioners and Specialists and have never discouraged them from doing so.[76]

[76] Ms Elvira Brunt, written correspondence, 2008 page 2.

COMPLAINTS AGAINST MS ELIZABETH GOLDWAY

Two witnesses who gave evidence to the Inquiry alleged that Ms Elizabeth Goldway had:

- claimed that she was able to cure cancer, and
- failed to provide receipts for payment provided.

The Committee heard direct evidence from Mr Fen Thompson whose wife, Mary, (deceased), had been diagnosed with breast cancer in 2004. Mr Thompson stated that after having had a mastectomy in early 2005, Mary consulted Ms Goldway, who claimed she could cure her and encouraged Mary to purchase a number of unproven products and subjected her to untested treatments. Mr Thompson told the Committee that his wife paid an initial amount of $5000 to be connected to a 'Rife Machine'. On one occasion, Mary's sister, Ms Bernadette Gough, accompanied her to an appointment with Ms Goldway. Ms Gough provided evidence to the Inquiry, including her impressions of the treatment administered:

> What I saw was a great big machine with a lot of controls on the front of it. When I went in the room was really dark and it took a while for my eyes to adjust. Mary was sitting in a chair with a white sheet underneath her and I sat next to her. There was nothing attached to her at all—nothing—she just sat there in front of this machine. You could hear a little motor running.[77]

When asked by the Committee how much money his wife had paid in total for the treatment received from Ms Goldway, Mr Thompson stated that while he could not be entirely sure, his wife had bought two or three different types of machines from her, one of which had cost $3,500. Mr Thompson went on to tell the Committee that his wife had also purchased a laser pen from Ms Goldway:

> It was just an ordinary torch with a little red LED light on it which cost $600. Mary bought another one for one of her friends for $900. These torches with a red light on them were only $15 at Bunnings. Mary used to sit in bed at night with this red light on for hours and hours.[78]

The Committee also received a written submission critical of Ms Goldway:

Letter of Complaint: Example 1

My husband was diagnosed with metastatic melanoma in early 2001 and underwent a course of chemotherapy which proved ineffective. He pursued other options of acupuncture and meditation. A close friend, who was suffering from ovarian cancer, recommended her alternative therapist: Elizabeth Goldway. She promised him a complete cure. The treatment consisted of bowel irrigation using organic coffee enemas, herbal therapies, an ioniser machine and strict dietary restrictions. Payment was always on a cash only basis and no receipts were ever issued.

Written submission: Ms J Roberts

[77] Ms Bernadette Gough, Committee Hansard, 2008 page 128.
[78] Mr Fen Thompson, Committee Hansard, 2008 page 130.

While the Health and Community Services Complaints Commissioner did not directly name Ms Goldway in information provided to this Inquiry, the Committee understands that the Commissioner did investigate Ms Goldway's practices:

Letter of Complaint: Example 2

In 2006 a GP complained to the office of the Health and Community Services Complaints Commissioner (HCSCC) that a 52-year-old patient had been persuaded to stop conventional palliative care for terminal prostate cancer and had paid at least $3500 for unconventional treatment allegedly claimed to cure cancer. The man died three months after the GP complained to HCSCC.

The unregistered practitioner repeatedly delayed responding to HCSCC requests for a wide range of information, including information about her training, qualifications, costs, standards and efficacy of her treatments. Her responses to date have been incomplete and unsatisfactory. The university she cited as awarding her degree in palliative medicine is an online university that sells qualifications.

HCSCC established that the practitioner, who uses the title 'Dr', is not a registered medical practitioner in Australia. The Medical Board of South Australia (MBSA) is pursuing this issue. SAPOL [South Australia Police] is also investigating a potential criminal dishonesty offence. Neither the Office of Consumer and Business Affairs or the Australian Consumer and Competition Authority have received complaints about this practitioner's registered business.

HCSCC has suspended action on this matter until the MBSA and SAPOL advise the outcome of their investigations.

Not all submissions received about Ms Goldway were negative. The Committee received four letters in support of her work. Two such examples are provided below:

Letter of Support: Example 1

I sustained extensive injuries from an assault many years ago and no specialists or physiotherapists helped. Elizabeth began an intensive course of massage and some herbal treatments and before this I had no pain relief. Not to say this was a 'cure' as such but she helped me where other traditional practices had not.

Written submission: Mr P Gordon

Letter of Support: Example 2

In May 2008, I had all the symptoms of leukaemia. I elected to be treated by Doctor Goldway. She used blood tests that I continued to have under her treatment. These blood tests indicate that my blood has now returned to normal and I once again feel well. The haematologist who also checked my blood results told me that 'he no longer needs me as a customer.'

Written submission: Mr R Edwards

RESPONSE FROM MS ELIZABETH GOLDWAY

The Committee received written correspondence from Ms Goldway. After considering this correspondence, the Committee concluded that it lacked coherent expression. What follows is an excerpt of the correspondence received:

> As the undersigned holds a personal, private and scripturally-grounded belief in the fact that it is a 'dishonourable' act for any party to attempt to settle any given real, alleged or possible 'controversy' or 'conflict' by way of entering into any form of written or verbal 'arguments' (see Matthew 5: *25),* the undersigned trusts that you, and all other members of the 'Parliamentary Inquiry Into Bogus, Unregistered & Deregistered Health Practitioners' will demonstrate your ongoing honour to the undersigned and other interested parties by not insisting or demanding that the undersigned attempt to resolve any matters or issues of concern by way of entering into any form of written or verbal 'arguments', which would with all due respect, have the unintended effect of placing the undersigned into an unintended 'dishonour', which would then also inadvertently prohibit and prevent (albeit lawfully) the undersigned from obtaining a private agreement and therefore 'stipulation' from any and all 'complaining parties' (personally or through an agent for the complainants) as to what the 'true, correct, complete, certain and not misleading facts' are in these matters.[79]

In a second letter sent to the Committee, Ms Goldway requested that all Committee members and any 'complainants' sign a sworn affidavit 'thereby placing all of their personal and private property on the line …'[80] Both the tone and content of Ms Goldway's correspondence were of concern to the Committee.

The Committee extended Ms Goldway the courtesy of viewing the complaints received against her. This course of action was not taken up by Ms Goldway.

[79] Ms Elizabeth Goldway, written correspondence, 8 December, 2008, page 1.

[80] Ms Elizabeth Goldway, written correspondence, 8 December, 2008 page 2.

COMPLAINTS AGAINST MS MONICA MILKA

The Inquiry received one written complaint about Ms Monica Milka. It alleged that Ms Milka had:

- claimed that she was able to cure cancer, and
- failed to provide receipts for payment provided.

Letter of Complaint: Example 1

In 2005, my husband, Ross, was diagnosed with cancer of the bile ducts. After surgery and various courses of chemotherapy and radiotherapy treatments failed to halt the diseases, my husband sought the help of Monica Milka who did 'alternative therapies'. Monika assured my husband that she could cure him and commenced treating him with all types of sprays, medicines and injections. The many injections she gave to his stomach were to 'kill the worms' that were causing the problem but in fact left him very sore. She also took photos of his eyes and then showed him those supposed images on a computer screen, pointing out the 'areas of improvement' and telling him how well he was doing. Ross paid Monica over $500 per week.

Initially he paid by visa card so received a receipt for this payment but later on he began to pay cash and no longer received any receipts.

Written submission: Ms V Wright

In addition to this complaint, in the course of its Inquiry, the Committee became aware of an investigation undertaken by the Department of Health into treatment known as 'mesotherapy.' This treatment includes injecting minute quantities of various substances and saline under the skin to 'target' fat cells and reduce cellulite.

According to the Department, instances of this treatment were provided by 'Monika's Entity', an alternative therapist operating in Gawler, South Australia, and who the Committee understands is Ms Milka. Cases investigated by the Department were linked to skin abscesses affecting at least six people who had undergone treatment at the premises of 'Monika's Entity'. One patient was confirmed as having a mycobacterial infection which the Department noted is a particularly difficult condition to treat.[81]

Under the provisions contained in the *Public and Environmental Health Act 1987*, the Department of Health seized samples and equipment from the premises and ordered that the procedure no longer be undertaken by the therapist at the centre of its investigation.

[81] Department of Health, Media Release: SA Health issues mesotherapy alert, 26 June 2008. *See* http://www.publications.health.sa.gov.au/dhm/21/

Concerned that this potentially dangerous treatment would continue to be undertaken, the Committee wrote to the Department asking how the public will be protected from this practitioner administering this treatment in the future. In reply, the Department advised the Committee that it would 'continue to monitor and enforce the standards required under the *Public and Environmental Health Act 1987*.'[82]

RESPONSE FROM MS MONICA MILKA

The Committee received written correspondence from Clark Radin (lawyers) representing Ms Monika Milka. In their letter, Clark Radin requested that copies of all oral and written submissions received by the Committee against Ms Milka be provided to them. In response to this request, the Committee sent a subsequent letter advising Clark Radin that while it does not provide copies of evidence heard by the Committee to the public, it does allow members of the public to come into Parliament House and read the evidence (subject to confidentiality requirements). The option to view the material was not taken up by either Ms Milka or Clark Radin.

COMPLAINTS AGAINST MR LUBOMIR BATELKA

On 7 July 2008, the Committee heard evidence from Mrs Shirley O'Donnell whose daughter, Shannon, had died from pancreatic cancer in December 2003. Mrs O'Donnell told the Committee that Mr Lubomir Batelka had:

- promised a '50 per cent cure' for cancer,
- subjected his patient to 'vaginal blowing' using an ozone therapy machine,
- administered an enema treatment during the same session,
- kept a photo album of women whom he had photographed nude,
- charged $100 in cash for his services and had not provided a receipt, and
- offered to continue his treatment at a cost of thousands of dollars.

According to Mrs O'Donnell, her daughter, Shannon had heard about Mr Batelka through a friend and sought treatment from him to help with her illness. Mrs O'Donnell told the Inquiry that her daughter 'had to sign a confidentiality form where Mr Batelka promised her a 50 per cent cure'.[83] Mrs O'Donnell noted that the confidentiality form had not mentioned the type of treatment that was to be carried out.

Mrs O'Donnell told the Inquiry that Mr Batelka had showed Shannon a photo album which featured photographs of the faeces of his clients. Mrs O'Donnell further told the Inquiry that Shannon told her that Mr Batelka had an album of female patients whom he photographed nude.

[82] Letter received from Department of Health in response to Committee's request for further information, 2 July 2008.
[83] Mrs Shirley O'Donnell, Committee Hansard, 2008 page 86.

Mrs O'Donnell told the Inquiry that Shannon had been scheduled to receive further treatment at Mr Batelka's home but that 'he would not allow her to have a mobile phone or any other communication with her family while she was being treated.'[84]

The Committee understands that South Australia Police referred this case to the Health and Community Services Complaints Commissioner (HCSCC) in 2005 after it was unable to complete its investigation into allegations of sexual abuse because the patient had died and there were no other victim statements. While the HCSCC investigated the matter and concluded that the responses provided by the practitioner were 'incomplete and unsatisfactory', it did not publicly name the practitioner concerned. The public naming of Mr Batelka occurred through media interest in the course of the current Inquiry.

RESPONSE FROM MR LUBOMIR BATELKA

On 16 February 2009, the Committee heard direct evidence from Mr Lubomir Batelka. In his evidence, Mr Batelka expressed a general distrust of conventional medicine. He told the Committee that treating cancer with chemotherapy and radiation is a 'passport to death'.[85] According to Mr Batelka, 'only ozone can eliminate cancer'.[86] He claimed that ozone therapy works by oxygenating the body and eliminating toxins. Mr Batelka told the Committee that he purchased a 'specially-designed' ozone therapy machine over a decade ago at a cost of $15,000 from a medical practitioner. Mr Batelka refused to provide the Committee with the name of this practitioner.

The Committee asked Mr Batelka to describe in detail the treatment that he administered:

> I have a catheter and connect it to the ozone machine…The machine…uses medical oxygen and ozone…You can use it for vaginal insufflation or you can use it for rectal insufflation [blowing the mixture of ozone and oxygen into the vagina or rectum].[87]

Mr Batelka told the Committee that he uses 'ozonated oil' as a lubricant and that he manufactures this oil himself.[88]

Mr Batelka told the Committee that he does not advertise his services. When asked by the Committee how people hear about his treatment, Mr Batelka stated that it was by word-of-mouth. The Committee asked Mr Batelka how long he had been administering his treatment and how many people he had treated. In reply, Mr Batelka stated that he had treated about ten people over a ten-year span. According to Mr Batelka, he last administered his treatment to an ill person around three months prior to giving evidence. When asked by the Committee if he intended to continue administering this treatment,

[84] Mrs Shirley O'Donnell, Committee Hansard, 2008 page 86.

[85] Mr Lubomir Batelka, oral evidence, Committee Hansard page 182.

[86] Mr Lubomir Batelka, oral evidence, Committee Hansard pages 182.

[87] Mr Lubomir Batelka, oral evidence, Committee Hansard pages 182 and 183.

[88] Mr Lubomir Batelka, oral evidence, Committee Hansard page 183.

Mr Batelka indicated that he would not do so any longer because the Committee was 'hunting persons who are doing ozone therapy'.[89]

In the course of his evidence, Mr Batelka responded to the Committee's questions about the treatment he had provided to Ms Shannon O'Donnell (deceased) and associated matters.

Mr Batelka confirmed that he had promised Ms O'Donnell a '50 per cent cure' and had administered 'vaginal insufflation' and an enema treatment using an ozone therapy machine.[90] Mr Batelka told the Committee that Ms O'Donnell was 'fully informed about the procedure' and had consented to it.[91]

Furthermore, Mr Batelka confirmed that he had charged Ms O'Donnell $100 in cash for his services and had not provided her with a receipt for this payment.[92] He also confirmed that he had offered to continue his treatment for a fee of $3000.[93]

The Committee was also able to establish that Mr Batelka has a photo album of women whom he has photographed nude.[94] According to Mr Batelka, these photographs show evidence of his treatment efficacy.

During his evidence, Mr Batelka also distributed photographs of some of his patients' faecal matter which he suggested was further proof of the efficacy of his treatment.[95] According to Mr Batelka, one photograph showed a tumour being expelled as a result of his treatment. The Committee was unconvinced by Mr Batelka's claims and furthermore was concerned by the seemingly unhygienic and questionable practices shown in the photographs.

After hearing Mr Batelka's evidence, the Committee considers that the allegations against him have merit. The Committee has strong concerns about the treatments administered by Mr Batelka. In particular, the Committee has serious reservations about the personally invasive nature of the procedures undertaken by Mr Batelka and the standard of hygiene applied by him during these procedures.

The Committee was shocked by the photographs Mr Batelka distributed during his appearance before the Inquiry. It considers that the photographs serve no positive purpose.

The Committee established that Mr Batelka has neither formal training in any health or related fields nor any formal qualifications. Mr Batelka provided no reliable or credible evidence to support his claims that ozone therapy is either safe or effective.[96] He did,

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[89] Mr Lubomir Batelka, oral evidence, Committee Hansard page 192.

[90] Mr Lubomir Batelka, oral evidence, Committee Hansard page 183.

[91] Mr Lubomir Batelka, oral evidence, Committee Hansard pages 182 and 188.

[92] Mr Lubomir Batelka, oral evidence, Committee Hansard page 194.

[93] Mr Lubomir Batelka, oral evidence, Committee Hansard page 195.

[94] Mr Lubomir Batelka, oral evidence, Committee Hansard pages 189 and 190.

[95] Mr Lubomir Batelka, oral evidence, Committee Hansard page 188.

[96] For example, as part of his evidence Mr Batelka showed the Committee a book on ozone therapy authored by H. E. Sartori. The Committee notes that a 2006 newspaper article in *The Age* refers to Mr Sartori as a 'discredited Austrian doctor' who 'has a history of alleged fraud, corruption and malpractice spanning more than two decades in 14 American states' and 'served five years jail in

however, submit personal references from two individuals who claim to have been helped by his treatment. The Committee notes that a police investigation of Mr Batelka determined that, because Ms Shannon O'Donnell had died and no other victim statements were provided, police would not pursue the case any further.[97]

Committee Comment

The evidence presented to the Inquiry has raised a number of serious concerns about unregistered practitioners who make unsubstantiated claims about 'cures' for cancer, or employ techniques and procedures that are unsupported by any credible evidence as to their safety or efficacy.

The Committee considers that the current absence of a sound regulatory structure makes it difficult for consumers to identify properly skilled and qualified health practitioners. The case studies presented to the Inquiry strengthen the case for greater regulation to ensure health consumers are better protected from untrained and unqualified health practitioners. (*See* Section Five of this report)

RECOMMENDATIONS

- The Committee recommends that the Minister for Consumer Affairs implement strategies to encourage consumers to play a greater role in identifying bogus health practitioners who operate on a cash-in-hand basis without proper record-keeping, issuing of receipts or invoicing procedures.

- The Committee recommends that the State Government urge the Commonwealth Government to strengthen the capacity of the Australian Taxation Office to investigate any complaints by health consumers about inappropriate record-keeping and potential tax evasion by dubious health practitioners.

Virginia from 1999 and nine months in a New York jail in 1996'. *See* article entitled 'Dr Ozone's long history of preying on the terminally ill' at www.theage.com.au/news/national/dr-ozones-long-history-of-preying-on-the-terminally-ill/2006/07/14/1152637871193.html 2009 accessed online 17 February 2009. In addition, Mr Batelka submitted as evidence an unsourced list containing over two hundred medical conditions that he claimed have been treated using ozone. The list included: AIDS, Measles, Osteoporosis, Syphilis, Tourette's syndrome and varicose veins.

[97] Health and Community Services Complaints Commission, second written submission, November 2008 page 2.

SECTION FOUR: DEREGISTERED HEALTH PRACTITIONERS

A deregistered health practitioner is a person whose registration as a health practitioner under a health registration Act or corresponding health registration legislation has been cancelled or suspended. Deregistration represents a substantial penalty for any registered health practitioner. This section focuses on issues relating to deregistered health practitioners, including the capacity of consumers to access information about those practitioners who have been deregistered or had practise limitations placed upon them.

PREVALENCE

The Committee wrote to all of the South Australian statutory health boards seeking information on the numbers of health practitioners that have been deregistered. The responses received suggest that the total number of health practitioners who have been deregistered over the past few years is relatively low (*see* Table 3).

Table 3: Number of deregistered, suspended or cancelled health professionals in SA in the last 5 years

Registered Profession	Suspensions, Cancellations, Deregistrations
Chiropractic & Osteopathy Board SA	Suspension: One Chiropractor Cancellation: One Chiropractor
Occupational Therapy Board SA	None
Podiatry Board SA	None
SA Psychological Board	Suspension: Two Psychologists Cancellation: One Psychologist deregistered
Dental Board SA	Cancellations/Suspensions: Four over the past five years Deregistrations: One over the past five years
Medical Board SA	Suspensions (disciplinary) : Six over the past five years Suspensions (health reasons) Nine over the past five years Cancellations: Four over the past five years (three of which were due to sexual misconduct)
Nurses Board SA	Cancellations: Nine in the past 3 years
Optometry Board SA	No suspensions, cancellations, deregistrations
Pharmacy Board SA	No suspensions, cancellations or deregistrations
Physiotherapy Board SA	No suspensions, cancellations or deregistrations for disciplinary reasons .

For example, while the Pharmacy Board of South Australia reported that it had received a total of 116 complaints against registered pharmacists over the last five years, no pharmacists have had their registration cancelled during this time. Over the past three years, the Nurses Board has cancelled the registration of nine nurses.

As already stated in this report, deregistered health practitioners do not necessarily pose any problem to the health system. By definition, these practitioners have been dealt with by the statutory health board under which they operate. However, the Inquiry heard that deregistered health practitioners do become a problem when, having been deregistered in a regulated area of health care for unprofessional or unethical conduct, they reinvent themselves in an unregulated field of health care and continue to practise in an unprofessional or unethical way free of regulatory oversight.

While information about the number of health practitioners who have been deregistered is known, the Committee notes that the extent to which deregistered health practitioners continue to practise in other unregulated areas of health care is not clear.

The following example provided in the Health and Community Services Complaints Commissioner's (HCSCC) written submission throws light on this problem:

A deregistered dentist providing magnetic and dietary therapies

In 2006 a woman complained to HCSCC that her 66 year old husband (deceased) had paid $24,000 for 12 months' unconventional treatment - magnetic therapy and alternative medications - allegedly claimed to cure cancer. The man died in 2005 three months after starting the treatment. His widow had not received a response to her requests for a partial refund.

The unregistered practitioner involved was a former dentist. He deregistered himself before the Dental Board of South Australia could do so. He did so after the Board's investigation into complaints about his unconventional practices during 1997-2001 and a subsequent finding of professional misconduct by the Dental Professional Conduct Tribunal, for which he was fined and ordered to pay legal costs. These monies remain unpaid.

Media publicity, including naming this practitioner, occurred during 2002-03.

Repeated letters to this practitioner, including letters advising penalties for non compliance with HCSCC requests for information, were returned unclaimed. HCSCC was therefore unable to put the complaint to him or to reach a determination about the issues.

Mr Joe Hooper, Registrar and Chief Executive Officer, Medical Board of South Australia, explained that the removal of a medical practitioner from the medical register is undertaken when the practitioner is deemed unfit to practice. In situations where a doctor suffers from a medical condition, the condition must impede the doctor's capacity to practise medicine before they are removed from the register. Should a doctor, for example, suffer from diabetes, this in itself would not necessitate removal from the medical register unless the doctor was no longer able to perform the required tasks. Mr Hooper provided an example of such a situation:

> a diabetic may suffer poor diabetic control such that they will develop a condition known as peripheral neuropathy where … they lose dexterity and feeling. If that doctor was a surgeon and consequently needed to have dexterity and fine motor movement … the illness [would] impede upon their standard of practice.[98]

The Board may also suspend a person's registration for a period not exceeding 3 months if it is satisfied that there is proper cause for taking disciplinary action (*see* Section 51 of the *Medical Practice Act 2004*). Moreover, the Medical Professional Conduct Tribunal has greater disciplinary powers which allow it to suspend a person's registration for a period not exceeding 12 months or cancel a person's registration and disqualify the person from being registered permanently, for a specified period, until the fulfilment of certain conditions or until further order (*see* Section 57 of the *Medical Practice Act 2004*).

Procedures relating to deregistration

The Committee was keen to understand what procedures are in place once the decision to deregister a medical practitioner has been made. According to the South Australian Medical Board, when a person is deregistered, the Registrar writes to the person advising that she/he has been removed from the register and requesting the return of his/her annual practising certificate. The person is warned that they must not provide medical treatment until such time that they are reinstated to the appropriate register and that doing so is an offence against the *Medical Practice Act 2004*.

Communication of deregistration

The Committee was also interested to know what communication strategies are in place once a medical practitioner has been deregistered. The Medical Board of South Australia told the Committee that it advises a number of bodies, including interstate medical boards and some overseas medical regulatory authorities about the removal of a person from the register or the imposition of conditions which restrict a person's right to provide medical treatment.

According to the Board, Section 88 of the *Medical Practice Act 2004* permits the Board to disclose personal information obtained in the course of official duties where it is in connection with the administration of the Act, to interstate or international medical regulatory authorities or to another agency or instrumentality of South Australia, the Commonwealth or another state or territory of the Commonwealth.

[98] Mr Joe Hooper, oral evidence, Committee Hansard, 2008 page 56.

Monitoring of deregistration

The Committee was informed that the principal mechanism for deterring a deregistered person from continuing to practice is through the removal of his/her Medicare provider and prescriber numbers. Nevertheless, it is possible for a deregistered practitioner to continue to practice outside the Medicare system and seek personal payment from the patient. Other monitoring may include random practice visits by Board-appointed inspectors, record audits, website monitoring and interviews of practice staff/patients. According to the Medical Board of South Australia, 'such activities are usually restricted due to the resources required to 'police' such persons.'[99]

In its written submission, the Board provided some examples of cases in which deregistered health practitioners had re-established themselves in unregulated areas of health care:

Medical Board: Case 1

A deregistered psychiatrist continued to practice as a counsellor. The person continued to advertise his/her services under the heading 'Psychiatry' in the Yellow Pages and used the prefix 'Dr' in conjunction with his/her name, displayed signs at the consultation rooms that contained the prefix 'Dr' and suffix 'psychiatrist' in conjunction with his/her name, provided services to patients who believed that they were receiving specialised medical treatment from a registered psychiatrist and issued invoices to patients that contained the prefix 'Dr' in conjunction with his/her name and a Medicare provider number.

The person asserted that the Yellow Pages advertisement was run without his/her approval, his landlord had failed to change the signage at the consultation rooms despite requests to do so and he inadvertently issued invoices on old letterhead. The person undertook to correct these matters.

Outcome: The Medical Board issued a written warning to the person. The activity ceased.

[99] Medical Board (SA), written submission, 16 June 2008 page 4.

Medical Board: Case 2

A deregistered general practitioner continued to practice as a nutritionist. The matter came to the Board's attention after the person ordered blood tests for a patient using his/her cancelled Medicare provider number. The person had also used the prefix 'Dr' in conjunction with his/her name.

Outcome: The person was issued with both a verbal and written warning and agreed to refrain from similar conduct in the future.

The Committee also received written correspondence from the South Australian Psychological Board regarding its decision to cancel the registration of a psychologist, Mr Marek Jantos, in November 2007. The Board found Mr Jantos guilty of, among other things:

- providing treatment that was not within the proper bounds of the practice of psychology,
- failing to observe appropriate boundaries and precautions in the practitioner/patient relationship, and
- engaging in numerous counts of inappropriate physical contact with the patient's genitals and buttocks.[100]

The Board informed the Committee that it 'is aware that a psychologist who was de-registered some years ago continues to advertise under the 'Psychotherapist' heading of the Yellow Pages'.[101] It informed the Inquiry that it 'understands that Mr Jantos intends to do likewise'.[102] According to information provided by the Board to the Inquiry:

> [Mr Jantos] has amended his website to remove any reference to the words 'psychologist' and 'psychology' and appears to be continuing his so called 'bio-feed back' practice involving treating vulnerable female patients for vulva pain.[103]

The Board expressed concern that such treatment 'is more the province of a gynaecologist' and as such had referred the matter to the Medical Board of South Australia to investigate. The Medical Board had subsequently advised the Psychological Board that it had 'no jurisdiction to take action against Mr Jantos'.[104]

[100] South Australian Psychological Board, written submission, 2008 page 1.
[101] South Australian Psychological Board, written submission, 2008 page 1.
[102] South Australian Psychological Board, written submission, 2008 page 2.
[103] South Australian Psychological Board, written submission, 2008 page 2.
[104] South Australian Psychological Board, written submission, 2008 page 2.

WHAT CAN BE DONE?

In its submission, the South Australian Psychological Board noted that the New South Wales *Psychologists Act 2001* had been amended to provide that the New South Wales Psychologists Tribunal with the following powers:

> (3A) If the Tribunal makes an order under subsection (2) in respect of a person and it is satisfied that the person poses a substantial risk to the health of members of the public, it may by order (a prohibition order)[105] do any one or more of the following:
>
> (a) prohibit the person from providing health services or specified health services for the period specified in the order or permanently,
>
> (b) place such conditions as the Tribunal thinks appropriate on the provision of health services or specified health services by the person for the period specified in the order or permanently.

According to the South Australian Psychological Board 'such an amendment to all health legislation would ensure the protection of the public from de-registered practitioners who unscrupulously continue to practice in the manner they were found guilty of by simply calling themselves something different'.[106]

ACCESS TO INFORMATION ABOUT DEREGISTERED PRACTITIONERS

The Committee was keen to understand whether the public is able to find out which health practitioners have been deregistered or had practice conditions or limitations placed upon them. In examining the websites of each of the ten statutory health boards, the Committee noted some inconsistencies in the way information was provided (*see* Table 4 overleaf*)*.

For example, in relation to the Nurses Board of South Australia, the Committee notes that although prospective employers and health consumers can access the Board's website to obtain information about whether a nurse is subject to any conditions or practice limitations, no information is contained about what the actual limitations are. As such, it is left up to employers and health consumers to directly contact the Nurses Board in the hope that this information will be provided.

[105] **Note:** Section 10AK (1) of the *Public Health Act 1991* (NSW) provides that it is an offence for a person to provide a health service in contravention of a prohibition order.

[106] South Australian Psychological Board, written submission, 2008 page 2.

Table 4: SA Health Boards: deregistration information featured on websites

Health Professional Regulatory Authority	Is Register available for search?	Is information on deregistered practitioners published?	Are the limitations/conditions on practice published?	Complaints procedure published?
Chiropractic & Osteopathy Board SA	Yes	Yes	Yes	Yes
Occupational Therapy Board SA	Yes	Yes	Yes	Yes
Podiatry Board SA	Yes	Yes	Yes	Yes
SA Psychological Board	Yes	Yes	Yes	Yes
Dental Board SA	Yes	Yes	Yes	Yes
Medical Board SA	Yes	**No**	**No**	Yes
Nurses Board SA	Yes	**No**	**No**	Yes
Optometry Board SA	Yes	**No**	**No**	Yes
Pharmacy Board SA	**No**	Yes	Yes	Yes
Physiotherapy Board SA	Yes	**No**	Yes	Yes

Committee Comment

The Committee is of the strong view that where a registered health practitioner has been deregistered for unprofessional or unethical conduct, she or he should be prevented from providing other health services. The Committee also considers that health consumers should have access to information about those practitioners who have been deregistered or who have restrictions placed on their practice. Furthermore, the Committee considers that if consumers had easier access to this type of information it would help prevent deregistered practitioners from providing health services under an unregistered title.

RECOMMENDATIONS

- The Committee recommends that the Minister for Health consider amending all relevant health legislation (similar to that which exists under the *New South Wales Psychologists Act 2001*), so that deregistered health practitioners – who have been deregistered for disciplinary reasons – are unable to re-establish themselves under a different title and/or continue to practise in unregulated areas of health care, without review.

- The Committee recommends that the Minister for Health encourage all South Australian statutory health boards to establish and maintain data systems which enable consumers and employers to access up-to-date information about practitioners who have been deregistered, cancelled or suspended or who have conditions or limitations placed on their practice.

SECTION FIVE: WHAT REGULATORY MEASURES ARE POSSIBLE?

> People feel very frustrated and angry that there can be an area where there is no regulation and there is no action.[107]

As part of the Inquiry's terms of reference, the Committee was required to examine the measures, regulatory or otherwise, that can be taken to better protect the public from bogus, unregistered and deregistered practitioners. Section four of this report has already recommended regulatory measures to deal with unscrupulous deregistered health practitioners. This section examines what can be done to better protect consumers from bogus and unregistered health practitioners. As part of this examination, it was necessary for the Committee to consider existing regulatory mechanisms and determine their effectiveness.

CURRENT REGULATORY MECHANISMS

Apart from professional associations that handle complaints against unregistered health practitioners who are members of their particular association, there are a number of other regulatory mechanisms in place to address complaints. The effectiveness of these mechanisms, however, is questionable.

Office of the Health and Community Services Complaints Commissioner

The office of the Health and Community Services Complaints Commissioner was established in October 2005. It investigates health, aged care and community services complaints across the public, private and non-government sectors. The office of the Commissioner was established by the *Health and Community Services Complaints Act 2004*.

Under Section 3 of the Act, the role of the Health and Community Services Complaints Commissioner is to:

- improve the quality and safety of health and community services in South Australia through the provision of a fair and independent means for the assessment, conciliation, investigation and resolution of complaints; and
- provide effective alternative dispute resolution mechanisms for users and providers of health or community services to resolve complaints
- promote the development and application of principles and practices of the highest standard in the handling of complaints concerning health or community services
- provide a scheme that can be used to monitor trends in complaints concerning health or community services

[107] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008 page 5.

- identify, investigate and report on systemic issues concerning the delivery of health or community services.[108]

Ms Leena Sudano provided the Committee with background information on the establishment of the office of the Health and Community Services Complaints Commissioner. She noted that initially there was concern that the Commissioner would be 'an intrusive, punitive watchdog' similar to the way in which comparable complaints bodies are perceived across other Australian jurisdictions. Ms Sudano informed the Committee that in an attempt to counter this perception, the office of the Commissioner spent a lot of time establishing an environment of positive cooperation and trust with a wide range of service providers—'learning, not lynching.'[109]

Ms Sudano informed the Committee that under the *Health and Community Services Complaints Act 2004*, the Commissioner has the power to investigate where:

- there is a significant issue of public interest, safety or importance that has been unable to be resolved by other means,
- there are systemic patterns emerging; or
- service providers are not being cooperative.

While these investigative powers currently exist, Ms Sudano informed the Committee that this aspect of the legislation is 'the least used part of the Act' and it has not been her 'custom or practice to use [her] investigatory powers under part 6' because, for the most part, health providers have been cooperative:

> [To] compliment South Australian providers—both health and community services and also child protection—the tendency has been, 'We want to engage with you to understand the perspective of the people who have used, or have sought to use, our services. We are keen to put this grievance to right.' So, they have stepped forward in a participative process rather than waiting until I get the big sticks out…[110]

In instances where there is a lack of cooperation from a health provider, Ms Sudano told the Committee that there is a range of procedural fairness provisions that need to be followed under the current legislation:

> Once I have drawn up the notice I have to serve it on the provider and I have to give them 28 days to respond. I then have to consider their response and then I have scope to publish a report having considered their response but, if I'm going to provide any adverse comments that affect any person named in the report, I have to go back to the provider and give them a copy of the report. I have to give them a further 14 days to respond. I also have to, if they so request, include their written response in my published report or a fair summary of it.[111]

[108] www.austlii.edu.au/au/legis/sa/consol_act/hacsca2004413/s3.html accessed 19 May 2008.

[109] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008 page 3.

[110] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008 page 3.

[111] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008 pages 3 and 4.

Ms Sudano discussed the difficulties associated with adequately dealing with the complaints received about unregistered health practitioners who operate on the fringes of health care:

> There are many procedural fairness elements that are necessarily time-consuming, and in these three instances all our attempts to engage with these providers have failed. They're not interested in responding to letters; they're not interested in coming to meetings; they don't respond to phone calls ...[112]

And further:

> [T]here have been protracted delays in trying to contact the actual practitioners who are the subject of these complaints—they move around a lot. We have done cycles and cycles of registered mail and tracked it to make sure it has been picked up. We still get things sent back to us: 'not known', 'no forwarding address' We don't know whether these people have been party to that or whether they have actually moved on.
>
> Even where we have been able to get them to respond, they are frequently people who will not meet our timetables. We renegotiate timetables: they don't meet those. It goes on and on and on. They are not people who have characterised themselves by an attitude of accountability or reflectiveness about their practices or the consequences of their practices for patients.[113]

Ms Sudano told the Committee that there is provision under part 6 of the Act for the Commissioner to waive the requirement to provide a report to a person who would be adversely affected by it where the Commissioner believes that, if that person were to become aware of the proposed adverse comment, it would place at risk the safety or health of an individual.

She provided an example that came before the office of the Commissioner involving the wife of a man who had died after seeking help from an unregistered practitioner. According to Ms Sudano, the man's wife was extremely reluctant to come forward: 'we couldn't even get her to come into the office for months because the practitioner against whom she had tried to recover money after her husband died had actually said, 'I know where you live; I know where your children live; I know that you've got a cat'.'

The Committee was interested to understand whether under current legislation, the Commissioner has the power to publicly identify bogus health practitioners.

In response, Ms Sudano told the Inquiry:

> The Health and Community Services Complaints Act provides that, for me to be able to name someone—and, in effect, I would paraphrase it as a last resort power—I am required to exercise procedural fairness, and a number of other important steps that the parliament has legislated, which I interpret as: if these findings are to have integrity and if people are to be afforded natural justice, these procedures must be gone through.
>
> In this instance, we were unable to get even a skerrick of information out of this person. I am reluctant, at this stage of my jurisdiction, to be seen to be

[112] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008 page 4.

[113] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008 page 4.

> naming people without having had proper regard to the provisions of the Act.[114]

And further:

> [The] power available is to put light onto the name and the practices and, in a sense, if you like, a shaming, and using that to bring people into line. But most people would consider that is not really a power, as such, when you compare it to, for example, the prosecution powers my counterparts have in New South Wales ...[115]

Ms Sudano also told the Committee about her legal immunity in the event that she publishes an adverse finding about a practitioner: 'it is possible for me to put that in the public domain and for there to be no civil action against me'.[116]

The Committee notes that, to date, no official public health warnings naming any unregistered health practitioners who have had complaints made against them for using highly questionable practices have ever been issued by the Commissioner.

HCSCC investigations

In her written submission to the Inquiry, the Health and Community Services Complaints Commissioner summarised some of the problems she has encountered in addressing complaints about unregistered health practitioners. She also outlined what she perceived to be the limitations under which she operates:[117]

- difficulties and delays contacting the unregistered practitioners
- delayed or no response from the unregistered practitioners
- the complaints are not made by the people who received the services and there is no direct evidence to substantiate the allegations made second hand by the complainants
- shame, grief, frustration, anger and fear of retribution experienced by some families and informants
- lack of standards or other references regulating the provision of unconventional treatments and the practices of unregistered practitioners
- concerns that a few unconscionable unregistered practitioners tarnish responsible unregistered practitioners who offer services that likewise lack standards, regulatory mechanisms and evidence about their effectiveness
- lack of powers under Part 6 Investigations to compel compliance with HCSCC recommendations or to prosecute non compliance with them.

[114] Ms Leena Sudano, oral evidence, Committee Hansard, second appearance, 10 November 2008 page 164.

[115] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008 page 4.

[116] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008 page 4.

[117] HCSCC, written submission, 2008 page 4.

Committee Comment

The Committee notes that the Commissioner has stated that her legislative powers to investigate health practitioners are 'the least used part of the Act' because, in most instances, health practitioners have been cooperative and willing to constructively address any complaints against them.[118] However, the Committee is concerned that those health practitioners who have shown no willingness to have complaints against them addressed, and who have not responded to the Commissioner's request for information, have not had any penalty imposed on them.

The Committee is of the firm view that the Health and Community Services Complaints Commissioner should act to publicly identify individuals who are an ongoing risk to the public as soon as all appropriate timeframe-requirements have been met. In the case of the deregistered dentist who provided magnetic and dietary therapies (as outlined on page 48) the Committee considers that the Health and Community Services Complaints Commissioner should have used her existing powers to publicly identify this practitioner and, in doing so, ensure the public was appropriately warned against using his services. The Committee notes that the Commissioner sent 'repeated letters' to the practitioner but did not receive any response from the practitioner in relation to this matter. The Committee considers that appropriate steps were taken to contact this dentist and, as such, the Commissioner should have issued a public warning against him.

The Committee considers that the Commissioner should use her investigatory powers to full effect, work within the required timeframes as outlined in the *Health and Community Services Complaints Act 2004,* specifically sections 54 to 55, and make all reasonable endeavours to obtain a response from those individuals under investigation. Once this has been done, the Committee considers that the Commissioner should act decisively to publicly identify those individuals who represent a risk to the public and refer matters on to the relevant authorities as necessary.

Office of Consumer and Business Affairs

The Office of Consumer and Business Affairs (OCBA) has responsibility for the administration and enforcement of a number of Acts that oversee the protection of consumers. Its focus is primarily fair trading between consumers and traders and also consumer product safety. While OCBA does not investigate matters that are specifically within the province of another agency, there are two Acts that fall within its jurisdiction that are applicable to health complaints: the *Fair Trading Act 1987* and the *Trade Standards Act 1979*.[119]

Trade Standards Act 1979

The Act regulates the safety of consumer products and services. The Minister for Consumer Affairs can prescribe safety standards and ban dangerous goods and services. In order to ban a consumer service, such as an alternative medical service, the Minister must be satisfied that the service is dangerous or presents an undue risk to consumers.

[118] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008 page 3.

[119] Information relating to the Office of Consumer and Business Affairs has been sourced from its written submission, 2008 pages 1-4.

Expert medical advice or evidence would be required to justify such action and it presumes that the product or service is not regulated by another agency.[120]

The Fair Trading Act 1987

Section 42 of the Act enables the Commissioner for Consumer Affairs to issue a Substantiation of Claims Notice in relation to published advertisements or claims. It is an offence if a trader fails to respond to the Notice or fails to provide sufficient evidence to substantiate the claim. OCBA would require expert medical advice to determine if any evidence provided was sufficient to prove the claims published by the trader. Section 58 of the Act covers false or misleading representations made in the course of trade with respect to goods and services. Part 58(e) of the Act could apply if the provider of alternative medical services made misleading claims about the benefits of the treatment. This is a criminal offence and OCBA would need to provide evidence beyond reasonable doubt to secure a prosecution.

Australian Competition and Consumer Commission

In its written submission, OCBA also advised the Committee that the Australian Competition and Consumer Commission (ACCC) has similar fair trading and safety legislation to OCBA under the *Trade Practices Act 1974*. The Act regulates corporations and the ACCC will generally focus on issues of national or cross-border significance. The ACCC Scamwatch website provides general information about medical scams (miracle cures) and what consumers should do to protect themselves.[121] According to OCBA, it regularly meets with the ACCC in relation to fair trading and product safety related issues and refers matters to them for investigation where appropriate.[122]

The Committee is aware that, in 2006, the Australian Competition and Consumer Commission (ACCC) brought proceedings against Mr Paul Rana, his sons Mr Christopher James Rana and Mr Micheal[123] Lee Rana for engaging in misleading conduct and breaching the *Trade Practices Act 1974* (Cth).[124] Mr Rana and his sons promoted their RANA system – an alternative approach to cancer treatment – under several NuEra companies. The system offered a variety of products and therapies including vitamin supplements, coffee enemas, ozone therapy, live blood analysis, thermal imaging and devices known as parasite/energy zappers. Mr Rana claimed that his system:

- could cure cancer *or* reverse, stop or slow its progress *or* prolong the life of a person suffering cancer,
- was based on generally accepted science.

[120] Information taken from OCBA, written submission, 2008 page 2.

[121] See http://www.scamwatch.gov.au/content/index.phtml/tag/MiracleCures

[122] Information taken from OCBA, written submission, 2008 page 2.

[123] Correct spelling.

[124] See ACCC Media release: Court finds cancer sufferers exploited under The Rana System, 10 May 2007, accessed 10 February 2009 at www.accc.gov.au/content/index.phtml/itemId/787133.

The Federal Court found that these claims were without any foundation and that Mr Rana, with the assistance of his sons, engaged in 'unconscionable conduct' extracting significant amounts of money (up to $35,000) from cancer victims and other vulnerable health consumers. The court ordered that Mr Rana and his sons remove these false claims from any of the websites that they had established as part of their group of companies. In 2007, it was found that Mr Rana and others had sent a 'series of strange documents couched in pseudo legal medieval language to persons, including ACCC witnesses, demanding $294M.' As a result, the ACCC was forced to take further action against Mr Rana to prevent him from harassing ACCC witnesses.[125]

Having failed to comply with a number of notices under section 155 of the *Trade Practices Act 1974*, which required documents and information to be provided to the ACCC, Mr Paul Rana was sentenced to six months imprisonment in March 2008.

Statutory Health Boards

Having received evidence from a number of statutory health boards the Committee notes that complaints against unregistered health practitioners can be investigated by health registration boards but only under certain limited circumstances. For example, the Medical Board of South Australia can investigate cases where unregistered practitioners hold themselves out to be medical doctors.

In its written submission, the Medical Board of South Australia provided such an example:

> A person offering treatment for cancer referred to himself/herself using the prefix 'Dr' in connection with his/her name. The person also claimed that he/she held a medical degree from a Western Australian University. The investigation discovered that the person had never been enrolled at the University and that they may have obtained money from patients by deception. The matter was referred to [South Australia Police] for investigation of potential dishonesty offences.

The Committee understands that complaints about health practitioners can be handled jointly between the Health and Community Services Complaints Commissioner and other statutory health authorities. However, the Committee is not clear how such joint handling actually works. The Committee is particularly concerned that such a system may result in unnecessary time delays while the two bodies negotiate which will take the lead role and how the matter will proceed.

Therapeutic Goods Administration

While recognising that the regulation of health care practices currently resides with the states and territories, the Committee was still keen to know what role, if any, the Therapeutic Goods Administration (TGA) played in the regulation of unregistered health practitioners. In a written response, the TGA advised the Committee that:

> The Therapeutic Goods Administration (TGA) does not play a role in the regulation of complementary health care practitioners, such as herbalists,

[125] See ACCC Media Release: Jail for discredited cancer therapist following ACCC action, March 2008, accessed 10 February 2009 at www.accc.gov.au/content/index.phtml?itemId=813986.

> naturopaths or homoeopaths, or alternative therapies, such as acupuncture, hypnosis and massage therapy. Nor does the TGA regulate the way in which health care practitioners conduct their professional practice.[126]

The TGA further advised the Committee that it is responsible for administering the provisions of the *Therapeutic Goods Act 1989* (the Act). According to the TGA, all therapeutic goods, unless specifically exempt or excluded under the Act, must be manufactured by licensed manufacturers in accordance with the principles of Good Manufacturing Practice and must be included in the Australian Register of Therapeutic Goods before they can be supplied in Australia.[127]

POSSIBLE REGULATORY MEASURES

One of the foremost issues that the Committee needed to address as part of its terms of reference was whether there should be tighter regulatory measures in place to deal with unregistered health practitioners. If so, what type of regulation would be most appropriate? Should there be strict legislative regulation put in place to cover unregistered practitioners or would some changes to the existing self-regulatory model be preferable?

The Inquiry was told that regulation of health practitioners can, and indeed does, occur through a range of different models. In his evidence to the inquiry, Mr David Filby, Executive Director, Policy & Intergovernment Relations Division, Department of Health, told the Committee that jurisdictions have moved towards regulating professions for three interconnected reasons: first, the need to deal with the development of special kinds of knowledge-based occupations; second, because of a large public investment in health and the need to assure the community of the quality and safety of the services being provided; and third, to differentiate between certain professions in terms of their knowledge and the types of services that they can offer.[128]

At one end of the continuum, self regulation is considered the least restrictive form of regulation, while at the other end 'reservation of title and whole of practice' is considered the most restrictive form of regulatory control.

The following discussion outlines the main models of regulation for health professions and considers some of the advantages and disadvantages associated with each model:

- Model 1: Self-regulation
- Model 2: Negative licensing
- Model 3: Co-regulation
- Model 4: Reservation of title [or statutory regulation]

[126] Therapeutic Goods Administration – Office of Complementary Medicines, 2008 page 1.

[127] Therapeutic Goods Administration – Office of Complementary Medicines, 2008 page 1.

[128] Mr David Filby, oral evidence, Committee Hansard, 2008 pages 71 and 72.

- Model 5: Reservation of title and core practice restriction [or statutory regulation]

- Model 6: Reservation of title and whole of practice restriction [or statutory regulation].[129]

Model 1: Self-regulation. Under this model there are no laws that require members of a particular profession to be registered with a statutory body. Consumers rely on a practitioner's voluntary membership of a professional association as an indication that the practitioner is suitably qualified, safe to practise and subject to a disciplinary scheme. However, membership of a professional association – if one exists – is not mandatory. As noted, a range of unregistered health practitioners falls under this first model including naturopaths, massage therapists, herbalists, counsellors and psychotherapists.

Advantages

- No barriers to entry via regulation
- Any person is able to use unregulated titles
- There are no regulatory costs

Disadvantages

- No guarantees that practitioners are competent to practise
- No obligation on practitioners to join a professional association
- No guarantee that professional associations give sufficient weight to consumer safety
- Court action by a consumer against an incompetent practitioner is difficult, costly and slow
- Only conduct which is criminal in nature is subject to prosecution and sanction

The Committee notes that not all health practitioners belong to an established professional association. In some cases, professional associations have not been established for the particular discipline, particularly those practices considered to be on the margins of accepted practice. In those cases the practitioner is almost entirely unregulated, although they would still be subject to legal proceedings in cases of criminal activity.

[129] Information about regulatory models presented in this section has been adapted from information contained in the Victorian State Government's Regulation of the health professions in Victoria: A discussion paper, 2003 page 20 and the Western Australian Department of Health's report entitled Regulation of Practitioners of Chinese Medicine in Western Australia: Discussion Paper, June 2005. Information regarding the advantages and disadvantages of each model has been taken from NSW Health, 'Regulation of Complementary Health Practitioners' – Discussion Paper, September 2002 pages 16 to 19.

Model 2: Negative licensing. Under this model, any person is able to practise in a self-regulated profession unless they are placed on a register of persons who are ineligible to practise. This model of regulation is generally considered less complex and less restrictive than other regulatory models because it targets those who behave illegally or unethically. However, it is not without some criticisms. According to Ms Shauna Ashewood, Vice President, National Herbalists Association of Australia, negative licensing does not adequately address the issue of educational standards and is 'a bit like shutting the door after the horse has bolted.'[130]

Model 3: Co-regulation. Under this approach, regulatory responsibility is shared between government and the industry. For example, professional associations may set membership requirements and standards and government may undertake accreditation and monitoring of the associations to ensure greater accountability and consumer protection.

Advantages

- Provides slightly better assurance that members of accredited professional associations are competent to practise

Disadvantages

- The government incurs costs in establishing and maintaining an accreditation system
- Those practitioners who join an accredited association incur membership costs
- A disciplinary system administered by a professional association may lack transparency, notwithstanding accreditation

The following models require certain health professions to be registered and meet agreed standards of qualifications, training, skills and competence. Statutory regulation can take various forms including protection of title and protection of practice.

Model 4: Reservation of title only. Under this model only practitioners that are registered with the relevant statutory authority can legally use a particular title. A statutory registration board establishes qualifications and character requirements for entry to the profession, develops standards of practice, and receives and investigates complaints of unprofessional conduct and applies sanctions, if necessary, including deregistration. It is difficult for a deregistered practitioner to practise because if they advertise their services to the public or use the reserved titles, they can be prosecuted through the courts for committing an offence.

Advantages

- Only practitioners who are registered with a statutory body are legally entitled to use a particular title
- Restricting the title means that consumers are readily able to identify appropriately qualified practitioners

[130] Ms Shauna Ashewood, oral evidence, Committee Hansard 2008 page 42.

- Provides a legislative underpinning of the regulatory body's disciplinary procedures

Disadvantages

- Restricting the title confers a competitive advantage on registrants over other related health practitioners

Model 5: Reservation of title and core practices. Under this model certain risky and intrusive acts or procedures within the defined scope of practice of a profession are restricted through legislation only to members of the registered profession and other registered health professions identified in legislation. Unregistered and unauthorised practitioners are prohibited from using reserved titles and may be liable for prosecution for an offence if they carry out any of the reserved core practices for which they are not authorised.

Advantages

- Consumers can be sure that potentially harmful practices are only undertaken by practitioners who are considered to have adequate training
- Untrained practitioners are prevented from entering the profession

Disadvantages

- Can be seen as anti-competitive
- Enforcement of restrictions can be onerous

Model 6: Reservation of title and whole of practice. This model is the most restrictive form of regulation. It is an offence for an unregistered person to use reserved professional titles. It is also an offence for an unregistered person to practise within the defined 'scope' of the profession.

Advantages

- Only qualified persons may practise in those areas of health that are regarded as being particularly high risk

Disadvantages

- Enables monopolistic practices by the health professions and leads to demarcation disputes between the professions
- Leads to increased fees and costs with little if any added public benefits in terms of greater protection

INTERSTATE COMPARISONS

Victoria

In Australia, laws regulating complementary health care rest with the individual states and territories. At present, Victoria is the only state in Australia to have formally regulated Chinese medicine practitioners and acupuncturists by introducing the *Chinese Medicine Registration Act 2000* (Vic). Statutory regulation of these professions was deemed necessary because of the potential risks to public health associated with Chinese medicine from transmission of infection from needle insertion and the potential harm due to the toxicity of certain Chinese herbs.

On 1 July 2007, the *Health Professions Registration Act 2005 (Vic)* (HPR Act) came into effect replacing various Acts relating to the registration of health practitioners including the *Chinese Medicine Registration Act 2000*. Among other things, the Act aims to:

- protect the public by providing for the registration of health practitioners and a common system of investigations into the professional conduct, professional performance and registered health practitioners ability to practise;
- oversee the advertising of regulated health services; and
- establish or continue the operation of various boards responsible for registering health practitioners and establish or continue the funds administered by those boards.[131]

New South Wales

On 1 August 2008, New South Wales introduced a Code of Conduct for unregistered health practitioners.[132] The Code underpins the changes made by the *Health Legislation Amendment (Unregistered Health Practitioners) Act 2006* and strengthens the NSW Health Care Complaints Commission's powers relating to:

- health providers who are not registered with a registration board, such as naturopaths, acupuncturists, and psychotherapists
- practitioners whose registration has been suspended or cancelled, and who seek to practise in an area where they do not need registration
- registered practitioners who provide health services that are unrelated to their registration.

Under the Code, unregistered health practitioners must, among other things:

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[131] Health Professions Registration Act 2005 accessed 6 February 2009 at www.austlii.edu.au/au/legis/vic/consol_act/hpra2005356/s1.html

[132] Information on the NSW Code of Conduct has been sourced from the NSW Health Care Complaints Commission website accessed 4 September 2008 at www.hccc.nsw.gov.au/html/Code_Contuct_Unregistered_page.htm

- have an adequate clinical basis to diagnose or treat an illness or condition
- not represent that they can cure cancer or other terminal illnesses, and be able to substantiate any claim that they can treat or alleviate the symptoms of such illnesses
- not attempt to discourage patients from seeking or continuing treatment by a registered medical practitioner, and cooperate with other health practitioners in the best interests of their patients
- not practise under the influence of alcohol or unlawful drugs, or medication that may impair their ability to practise
- not practise if they suffer from a physical or mental condition that is likely to detrimentally affect their ability or place patients at risk of harm
- not misrepresent their qualifications, training or professional affiliations
- not make any claims about the efficacy of their treatment or services if those claims cannot be substantiated
- not engage in a sexual or other close personal relationship with their patients
- keep appropriate records, comply with privacy laws, and have appropriate insurance.

In developing its Code of Conduct, the NSW Department of Health examined existing fair trading legislation and public health legislation and concluded that while these laws have the capacity to deal with false and misleading information, 'the processes involved in bringing [such cases] to conclusion can be lengthy and in many respects provide little if any ongoing protection for consumers.'[133]

For this reason, as part of the Code of Conduct, health practitioners are prohibited from advertising cures for cancer or other terminal illnesses. Specifically, Section 5 states:

> (1) A health practitioner must not hold himself or herself out as qualified, able or willing to cure cancer and other terminal illnesses.
>
> (2) A health practitioner may make a claim as to his or her ability or willingness to treat or alleviate the symptoms of those illnesses if that claim can be substantiated.[134]

Unregistered practitioners are also required to display both a copy of the Code of Conduct at their place of employment and information about the way in which clients can make complaints to the NSW Health Care Complaints Commission.

[133] NSW Health. Unregistered health Practitioners Code of Conduct: Impact Assessment Statement, 2007 page 11.

[134] See NSW Code of Conduct at www.legislation.nsw.gov.au/fragview/inforce/subordleg+644+2002+sch.3+0+N

New South Wales: Public Naming Powers

The Committee sought further information from the NSW Health Care Complaints Commission in relation to the case of Mr Ha Kyoon Jung, a radiographer who, in October 2008 was publicly named by the Commission for breaching the Code of Conduct for failing to provide services in a safe and ethical manner. Specifically, Mr Jung was deemed to have breached proper standards of conduct by requiring two clients to lie in positions where their genitals were exposed to him without clinical justifications. The Committee was interested to know:

- what contact, if any, did the NSW Health Care Complaints Commission have with Mr Jung prior to his public naming
- whether Mr Jung cooperated with their investigation, and if so, to what extent
- whether the Commission required Mr Jung to cooperate before they could publicly name him.

The Committee was advised that during the investigation into Mr Jung's conduct, the NSW Health Care Complaints Commission was not able to locate him. It did, however, attempt to contact Mr Jung and, in accordance, with section 41B of the *Health Care Complaints Act 1993* (NSW) delivered a written statement to his last known address regarding the decision to make a public statement. The Commission further advised that it believed that the protection of public health and safety was serious enough to warrant the issuing of a public statement, regardless of whether it was able to contact Mr Jung.

According to the Commission, Mr Jung has since been located and extradited back to NSW to face criminal charges.[135]

SUMMARY OF SUBMISSIONS RECEIVED

While there may be agreement that public safety requires the regulation of currently unregulated health practitioners, there remains some disagreement about what form of regulation is the most appropriate. The Committee notes the different systems of regulation and recognises that each has certain benefits and drawbacks that need to be carefully considered.

In its written submission, the Counselling Association of South Australia (CASA) highlighted the lack of consistent educational standards among those employed as counsellors and advocated for greater regulation. It stated there is a need for:

> [A] regulatory body encompassing formal acknowledgement of the profession with appropriate standards, boundaries, guidelines and ethical codes.[136]

Moreover, CASA also informed the Committee that the organisation has begun discussions with the Federal Government 'regarding significant changes that will allow both the acknowledgement of counselling and psychotherapy as a profession, and the tightening of controls via the provision of boundaries and ethical guidelines'. As part of

[135] Email correspondence received from Jane Street, Executive Officer, Health Care Complaints Commission, December 2, 2008.
[136] Counselling Association of South Australia, written submission, 2008 page 1.

this change, CASA hopes that tighter controls will be put in place precluding those individuals who do not have formally recognized tertiary or equivalent qualifications, who cannot provide evidence of ongoing, regular supervision, accruing points over each year and who do not carry appropriate insurance, from setting up practice as a counsellor or psychotherapist.[137]

In its written submission, the Australian Register of Homeopaths supports a model of 'co-regulation' which it believes 'would allow the profession to continue to monitor its regulation and registration but with some more direct responsibility for accountability to government'.[138]

Mr James Flowers, President, Australian Acupuncture and Chinese Medicine Association told the Inquiry that the Association was committed to working towards national statutory registration for the profession, noting that this had already occurred in Victoria and that moves had begun towards the same in Western Australia.[139]

Mr Flowers indicated that the Association preferred statutory registration:

> We actually think the time now is for registration … because we believe there will be an explosion of people of a poor standard [of training].[140]

And further:

> We are not asking for restricted practice; we're asking for protection of title so that, if someone wants to advertise themselves as an acupuncturist or a Chinese herbal medicine practitioner, then they have to be registered with that registration board. It does not stop the medical doctor still practising acupuncture on their patients, if they want to, or a physiotherapist practising acupuncture. However, if they want to advertise services like every other health profession that is registered, they have to be registered for that profession.[141]

Similarly, Ms Shauna Ashewood, Vice President, National Herbalists Association of Australia, told the Committee that the Association supports the Victorian model of statutory registration for traditional Chinese medicine. It considers that both health consumers and the professions are best served by such a model as it ensures a clear complaints process and a protection of title 'so that people who use the title are [those] who deserve to use it because they are well qualified and well educated and abide by a code of ethics.'[142]

In its submission, the Australian Medical Association (SA) advocated the introduction of a code of conduct for unregistered health practitioners similar to that which was recently introduced in New South Wales. According to the Association, any code of conduct introduced in South Australia should extend to all complementary and alternative medicines therapists and should be consistent with the approach adopted by other jurisdictions. It should require a practitioner to only practise within their scope of expertise and refer clients who require more highly skilled therapeutic intervention to an

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[137] Counselling Association of South Australia, written submission, 2008 page 3.

[138] Australian Register of Homeopaths, written submission, 2008 pages unnumbered.

[139] Mr James Flowers, oral evidence, Hansard 2008 page 15.

[140] Mr James Flowers, oral evidence, Committee Hansard 2008 page 24.

[141] Mr James Flowers, oral evidence, Committee Hansard 2008 page 25.

[142] Ms Shauna Ashewood, oral evidence, Committee Hansard 2008 page 43.

appropriately qualified practitioner. Furthermore, the Australian Medical Association (SA) argued that any code introduced would also need to:

- include a requirement for knowledge of basic first aid
- mandate the need for health practitioners to work respectfully in joint-care arrangements
- ensure adequate safeguards are in place to protect the public from infected unregulated practitioners (e.g. an acupuncturist who is Hepatitis C positive);
- include a medical college-style continuing education program or similar.[143]

Mr Raymond Khoury, Consultant, Australian Traditional Medicine Society (ATMS), told the Inquiry that:

> With more and more health consumers using the services of unregistered practitioners, and with the notorious activities of deregistered practitioners now becoming more widely known, the time to act is now.

According to Mr Khoury, the Australian Traditional Medicine Society considers that an expansion of current legislation is a sensible approach. Specifically, it considers the following legislative amendments should be made:

- The Health and Community Services Complaints Commissioner be given the power to name and shame, similar to the power found in section 91A of the *Fair Trading Act 1987*.
- Section 36 of the *Health and Community Services Complaints Act 2004* be expanded so as to allow disclosure of information where it is in the public interest to do so.
- Section 24 of the *Health and Community Services Complaints Act 2004* be expanded to allow complementary medicine professional associations to refer matters directly to the Commissioner.
- The *Health and Community Services Complaints Act 2004* be expanded to require complementary medicine professional associations to establish a complaints resolution process for non-serious matters.
- The *Health and Community Services Complaints Act 2004* be expanded to allow the Commissioner to take action against unregistered and deregistered practitioners following an investigation.
- The establishment of a South Australian code of conduct for unregistered health care practitioners and that a breach of the code would then trigger the mechanism to commence investigations.[144]

Ms Leena Sudano, Health and Community Services Complaints Commissioner, also supports the introduction of a statutory code of conduct for unregistered health

[143] AMA (SA) written submission, 2008 page 9.

[144] Mr Raymond Khoury, oral evidence, Committee Hansard 2008 page 78.

practitioners. She told the Inquiry that the office of the Health and Community Services Complaints Commissioner supports the adoption of legislative changes comparable to the NSW statutory Code of Conduct for unregistered health practitioners. As such, she considers that there is merit in extending the Commissioner's powers under Part 6 of the Act ('Investigations') to ensure compliance with the Commissioner's recommendations and consequences for non compliance.[145]

The submission from Health Rights and Community Action (HR&CA) – a consumer group which promotes consumer rights and interests in health services – provided a different perspective. The group was critical of the existing regulatory system in this state and others, which allows individual professions to register or regulate their own profession. According to HR&CA health consumers would be far better served if there was one body performing that function across the professions:

> It is our belief that one piece of consumer-centric legislation to cover the registration of the entire health and allied health professionals will go a long way in identifying those professionals not fit to practise (for whatever reason). This form of registration will also reinforce what consumers both implicitly and explicitly seek – a health care system that provides seamless services. Continuum of care is the Utopia.[146]

POLICY CONTEXT

Australian Health Ministers' Advisory Council (AHMAC)

In 1995, the Australian Health Ministers' Advisory Council (AHMAC) established a number of core criteria for assessing whether a profession should be regulated by legislation. The criteria (re-endorsed in March 2007) are as follows:

- Is it appropriate for Health Ministers to exercise responsibility for regulating the occupation in question, or does the occupation more appropriately fall within the domain of another Ministry?
- Do the activities of the occupation pose a significant risk of harm to the health and safety of the public?
- Do existing regulatory or other mechanisms fail to address health and safety issues?
- Is regulation possible to implement for the occupation in question?
- Is regulation practical to implement for the occupation in question?
- Do the benefits to the public of regulation clearly outweigh the potential negative impact of such regulation?[147]

[145] Ms Leena Sudano, oral evidence, Committee Hansard, first appearance, 17 March 2008, page 11.

[146] Health Rights and Community Action, written submission, 2008 page 1.

[147] As cited in Department of Health (South Australia), Report on Harms Associated with the Practice of Hypnosis and the Possibility of Developing a Code of Conduct for Registered and Unregistered Health Practitioners, April 2008, page 6.

Council of Australian Governments (COAG)

In March 2008, the Council of Australian Governments (COAG) agreed to introduce a national registration and accreditation system for health professionals.[148] In the first instance, the system would apply to the nine professions currently registered in all Australian jurisdictions: physiotherapy, optometry, nursing and midwifery, chiropractic care, pharmacy, dental care (dentists, dental hygienists, dental prosthetists and dental therapists), medicine, psychology and osteopathy. At its meeting of 26 March 2008, COAG agreed that all professions that fall within these nine groups would be covered by the national registration scheme as of 1 July 2010.

The main objectives of the national scheme, to be set out in the legislation, are to:

- provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered;
- facilitate workforce mobility across Australia and reduce red tape for practitioners;
- facilitate the provision of high quality education and training and rigorous and responsive assessment of overseas-trained practitioners;
- have regard to the public interest in promoting access to health services; and
- have regard to the need to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and enable innovation in education and service delivery.[149]

Committee Comment

The Committee notes that the diverse range of unregistered health practitioners form an important part of the overall provision of health care services available in South Australia. However, the Committee considers that the existing self-regulatory structures that oversee these practitioners do not adequately protect the public from unscrupulous practitioners. Several different regulatory models have been outlined in this report. The Committee notes that each model has it strengths and weaknesses. It considers that the regulatory models outlined warrant careful consideration by government to determine their appropriateness in South Australia and, most importantly, determine whether any of them can deliver better protection to health consumers than current arrangements.

As previously mentioned, the Committee considers that the Health and Community Services Complaints Commissioner should use her existing legislative powers to full effect and take action to publicly identify those individuals who exploit or represent a risk to health consumers. That said, the Committee also considers that the Commissioner's legislative powers should be expanded in line with those which exist in

[148] www.coag.gov.au/meetings/260308/ accessed 22 July 2008.

[149] Intergovernmental agreement for a national registration and accreditation scheme for the health professions accessed 22 July 2008 at www.coag.gov.au/meetings/260308/docs/iga_health_workforce.rtf

other jurisdictions, to enable her to make prohibition orders against unregistered practitioners who pose a substantial risk to public health.

The Committee is concerned that the current co-regulatory health complaints system which allows complaints about health practitioners to be handled jointly between the Health and Community Services Complaints Commissioner and other statutory health authorities may result in unnecessary duplication and, as such, serve to further confuse and frustrate health consumers. It would, therefore, like to see an examination of this co-regulatory system, particularly in light of the expanded legislative powers it has recommended.

RECOMMENDATIONS

- The Committee recommends that the Minister for Health introduce legislation to regulate a broad range of currently unregistered health practitioners and, in doing so, clearly establish:

    - the range of health practitioners that are covered under the legislation;

    - appropriate complaint and disciplinary mechanisms (including effective sanctions);

    - appropriate standards of training and education, including continuing professional education programs;

    - appropriate record-keeping systems, including the issuing of receipts;

    - a mechanism for monitoring the performance of practitioners;

    - a mechanism for reporting adverse events; and

    - proper standards for infection control.

- The Committee recommends that, in developing legislation to regulate unregistered health practitioners, the Minister for Health ensure:

    - this work is guided by the six criteria put forward by the Australian Health Ministers' Advisory Council (AHMAC) for assessing the need for the statutory regulation of unregulated health occupations;

    - consultation is undertaken with the Health and Community Services Complaints Commissioner, statutory health registration boards, health professional associations and relevant consumer groups; and

    - the merits of the regulatory models that have been recently introduced in other jurisdictions are examined to determine their appropriateness and applicability to South Australia and establish if any of them would deliver better protection to South Australian health consumers.

- The Committee recommends that the Minister for Health ensure that the office of the Health and Community Services Complaints Commissioner continues to improve both consumer awareness of its services and its ability to investigate complaints about bogus health practitioners.

- The Committee recommends that the Minister for Health consider strengthening the Health and Community Services Complaints Commissioner's ability to deal with bogus unregistered health practitioners by expanding the Commissioner's legislative powers to allow prohibition orders to be made against those practitioners who pose a substantial risk to public health.

- The Committee recommends that the Health and Community Services Complaints Commissioner exercise the existing legislative powers under the *Health and Community Services Complaints Act 2004* to their full extent and publicly identifies bogus health practitioners and exposes their dubious treatments and practices.

- The Committee recommends that the Minister for Health review the effectiveness of the protocols of the current co-regulatory complaints model between the Health and Community Services Complaints Commissioner and South Australia's statutory health boards to ensure they are appropriate and effective and do not unduly delay the complaints process, unintentionally confuse health complainants or further exacerbate the difficulties experienced by them.

SECTION SIX: PRACTICES OF CONCERN

Some evidence to the Inquiry highlighted a number of widely available but largely unregulated health/beauty procedures. In particular, the Medical Board of South Australia informed the Committee that it has concerns about patients who have been administered Botox injections, colonic irrigations and laser treatments by non-registered persons without appropriate medical supervision.[150] According to the Board, it had previously reported concerns about colonic irrigation to the Department of Health after learning that several patients had suffered bowel perforations and required colostomies but the department had limited capacity to act on the matter other than to look at the cleanliness, tidiness and environment of the facility.[151]

COLONIC IRRIGATION

Colonic irrigation is the practice of cleansing the colon using filtered and temperature-regulated water through a rectal catheter. The volume of water used may be up to 50 litres. [152] According to the Australian Medical Association, (SA) this procedure is 'often administered by a practitioner of complementary or alternative medicine, without medical advice.'[153] Recognised risks from the procedure include infection due to unsterile equipment that permits backflow of faecal material to the water system, injury to the colon such as perforation, exacerbation of chronic bowel disease such as diverticulitis, and scalding if water temperature regulating controls fail.[154]

The Committee heard directly from Dr Nick Rieger, Colorectal Surgeon, South Australia, who explained colonic irrigation in the following way:

> [The procedure involves] the installation of large volumes of fluid into the bowel via the anus, usually by self-impalement on a catheter tube, which is usually rigid, in a bath type contraption chamber ... large volumes of fluid, are instilled into the bowel, usually under reasonable pressure. The concept being that that fluid under that pressure will irrigate and clean out any waste faecal material. [155]

According to Dr Rieger, injury from the procedure can occur in two ways: either by a direct impalement when the actual device is being inserted or due to the direct high pressure of the fluid going in. In the reported cases of injuries due to colonic irrigation in South Australia, Dr Rieger told the Committee that the procedures were performed by different practitioners and were not isolated to any individual clinic.

Dr Rieger told the Committee that he was aware of four cases that resulted in quite disabling injuries related to colonic irrigation and required surgery – 'in some circumstances, major surgery, colostomy bags and then further revisional surgery afterwards'. [156]

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[150] Medical Board of South Australia, written submission, 2008.

[151] Mr Joe Hooper, oral evidence, Committee Hansard, 2008 page 66.

[152] AMA (SA), written submission, 2008 page 3.

[153] AMA (SA), written submission, 2008 page 3.

[154] AMA (SA), written submission, 2008 page 3.

[155] Dr Nick Rieger, oral evidence, Committee Hansard, 2008 page 110.

[156] Dr Nick Rieger, oral evidence, Committee Hansard, 2008 page 109.

When asked by the Committee whether colonic irrigation provided any medical benefit, Dr Rieger told the inquiry that if a person has normal bowel movement, colonic irrigation would serve no benefit.[157]

TOOTH WHITENING TREATMENTS

Dr Donald Wilson, President, Dental Board of SA, discussed the practice of tooth whitening treatments and told the Committee that the Dental Board is aware that some beauty therapists are providing this service. According to Dr Wilson, tooth whitening concentrations vary from that which can be readily purchased 'over-the-counter' to high strength tooth bleaching materials that can be harmful if not used correctly:

> It is very hard to define where in that range a registered person should be doing it and someone else should not, although we note that the General Dental Council in the United Kingdom has now deemed tooth whitening to be illegal unless done by a dental professional.[158]

Dr Wilson further advised the Committee that the issue of tooth whitening practices has been raised at a national level and Dental Boards are working towards developing an appropriate response.

BLOOD ANALYSIS TESTING

The Committee received correspondence from the Australian Institute of Medical Scientists (AIMS) – the professional association for medical scientists in Australia covering all disciplines of pathology – expressing concerns about blood analysis testing.

In its submission, AIMS pointed out that medical scientists – whom the organisation represents – are degree-qualified scientists who conduct blood cell analysis in accredited laboratories using 'sophisticated quantitative and qualitative procedures that reveal accurate and detailed information on a patient's blood sample.' However, AIMS is aware of a form of publicly available blood analysis testing – promoted as Live Blood Analysis or Haemaview – that is being performed by 'non pathology practitioners'.

According to AIMS, this form of blood analysis testing purports to be able to provide an indication of a person's general health as well as being able to diagnose various health problems by viewing a drop of fresh blood under a microscope. As the practitioners carrying out such tests do not have the benefit of accredited laboratories, AIMS is concerned that any blood analysis conclusions drawn form these tests will be flawed and 'may result in unnecessary recommendations for various dietary supplements and in some cases, misdiagnosis of serious disease states.'[159]

MEDICAL SERVICE PROVIDERS

Another area of concern raised by the Medical Board of South Australia related to the corporatisation of general practice. Corporate medical service providers often employ registered medical professionals but according to the Medical Board 'there is the

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[157] Dr Nick Rieger, oral evidence, Committee Hansard, 2008 page 111.

[158] Dr Donald Wilson, oral evidence, Committee Hansard, 2008 page 101.

[159] Australian Institute of Medical Scientists, written submission, 2008 page 2.

potential for conflict between the corporate providers' drive for profits and the practitioner's duty to the patient.'[160] Examples include corporate medical providers that contract doctors to recommend and sell medication to patients on long-term treatment contracts or conduct screening tests in circumstances where there is no clinical need.

The Medical Board indicated that in the case of some companies that deal with health issues such as sexual dysfunction and hair transplants, a doctor may not necessarily be located on site: 'they may be in Sydney at the end of a telephone'.[161] The Medical Board expressed concern that its resources would be severely compromised if it was required to take action against these corporations.

Similarly, the Australian Medical Association (SA) informed the Inquiry that it has received complaints from a variety of sources expressing concern about advertisements for erectile dysfunction treatments and promotions regarding improving sexual performance. The concerns primarily relate to the questionable nature of the advertising, which tends to prey on people's vulnerabilities; the claims that are being made; and the considerable cost of some of the programs which are being promoted.[162]

The Association provided the following example of a complaint it received:

> [On] calling one of the companies which offers these services, [the man's] call was transferred to someone he understood to be a medical practitioner, who asked a number of questions about his health status, and whether he smoked or drank alcohol. He was then prescribed a nasal delivery system (that is, a nasal spray). His call was then transferred to another person, who processed a payment from him for a 12-month course of treatment. He claimed the total cost of the treatment was in excess of $2,000.
>
> Shortly after receiving the initial course of nasal spray, he was concerned about an adverse reaction which he reported resulted in severe irritation in his nasal passages. On contacting the company again to seek to cancel his contract, he was offered the choice to switch to another type of drug, but informed that he had a contractual obligation to continue to receive a full 12-months supply, consistent with his contractual obligation.[163]

While considered beyond the scope of this Inquiry, the potential conflict between the commercial objectives of private providers and a practitioner's duty to their patients appears to be an emerging issue that will require further exploration.

Committee Comment

The Committee does not necessarily consider that health-related practices that are not part of conventional medicine are without merit. The Committee notes that the problem may not lie with a particular procedure but may have more to do with the lack of skill of an individual practitioner.

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[160] Medical Board of South Australia, written submission, 2008 page 6.

[161] Mr Joe Hooper, oral evidence, Committee Hansard, 2008 page 66.

[162] AMA (SA), written submission, 2008.

[163] AMA (SA), written submission, 2008 page 7.

Nevertheless, the Committee does consider that a number of practices need to be properly examined and validated before they are promoted to the public as having health benefits.

RECOMMENDATIONS

- The Committee recommends that, as soon as possible, the Minister for Health define and implement clear standards of practice to govern some of the more commonly used and readily available unregulated cosmetic/beauty treatments such as dermabrasion and laser skin procedures.

- The Committee recommends that the Department of Health conduct an investigation into non-hospital based colonic irrigation to determine the potential risks and benefits of the procedure and whether it should be restricted or regulated.

CONCLUSION

The primary purpose of regulating any occupation, including those within the broad category of unregistered health practices, is to protect the public from unethical behaviour or incompetent practice. Regulation is particularly important in occupations where, without proper oversight, there exists a very real and serious risk of harm to consumers.

In South Australia, ten health professions (including doctors, dentists, pharmacists and nurses) are regulated under a government regulatory system. It is recognised that these health professions have the potential to cause harm due to the very nature of the treatments and therapies provided. While unregistered health practitioners may be less likely to cause harm, and may not necessarily require full government regulation, the weakness of the current self-regulatory system that allows anyone to establish themselves as, for example, a naturopath or counsellor is no longer acceptable.

Those individuals who choose to work in health care must be sufficiently skilled and meet appropriate standards of quality and safety. In general, unregistered health practitioners have not been held to the same level of scrutiny that applies to other registered health practitioners. The Committee considers that the current absence of a sound regulatory structure makes it difficult for consumers to identify properly skilled and qualified health practitioners. It also significantly hinders the capacity for consumers to have their complaints dealt with constructively and expeditiously. Moreover, the current gap in the regulatory oversight of unregistered health practitioners provides an all too easy opportunity for bogus health practitioners to set up practice and exploit health consumers.

Data over recent years has revealed a significant rise in the popularity of many unregulated therapies. The fact that many health consumers are increasingly consulting unregistered health practitioners also strengthens the case for greater regulation. The Committee considers that legislation needs to be introduced to meet this increasing trend and, in doing so, be far more responsive to consumers' needs.

The Inquiry heard general support for legislative regulation as a way of protecting the public from untrained and unqualified health practitioners. What form this regulation ought to take, however, will require careful consideration of the occupations involved. The Committee notes the progress made in other jurisdictions on this matter and considers that there are valuable lessons to be learnt from the models adopted in Victoria and New South Wales.

The Committee considers that anyone who peddles false hope by pretending to be able to cure cancer is both unethical and cruel in the extreme. While it remains a significant challenge to completely eradicate bogus practitioners from our community, the Committee has recommended a series of actions that it considers will provide better consumer protection and strengthen community confidence in the health care system.

To that end, the Committee has resolved to call on the Health and Community Services Complaints Commissioner to report back on a quarterly basis on the progress made in dealing with complaints about unregistered health practitioners.

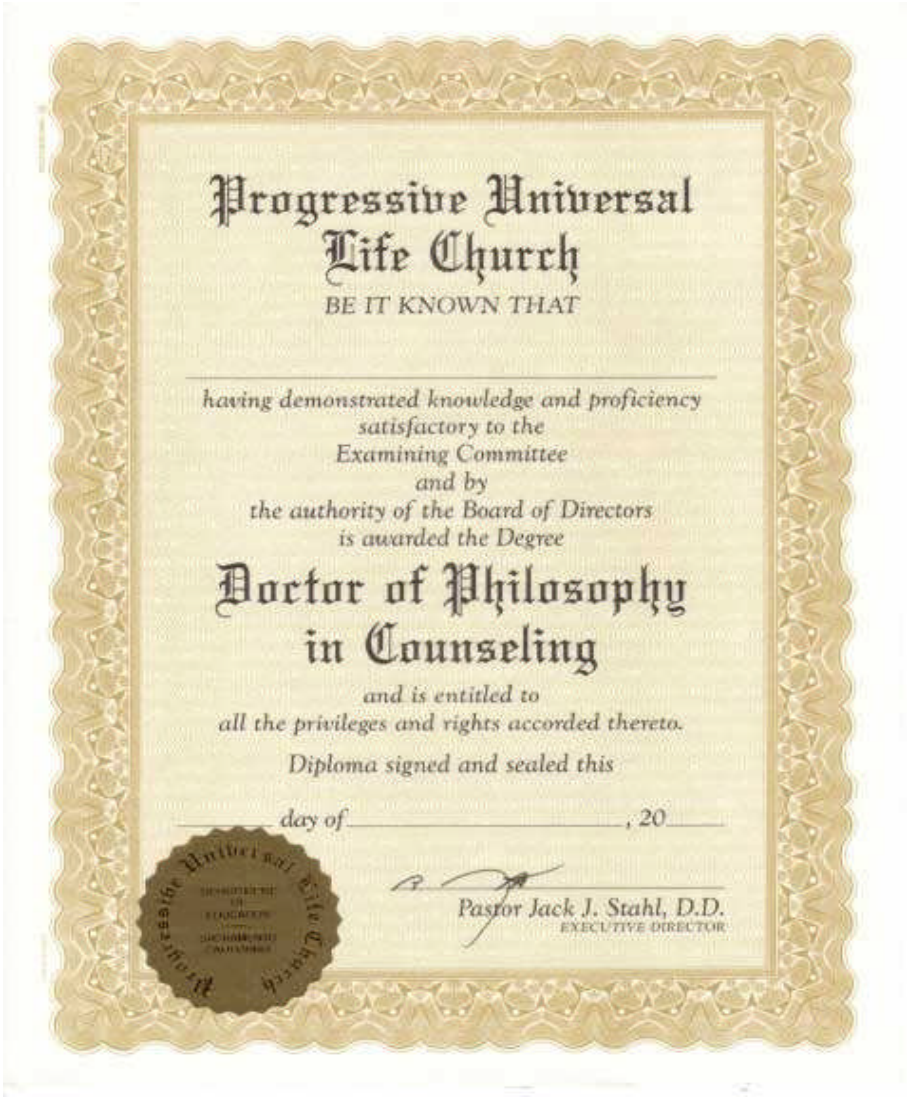
Additionally, the Committee has resolved to request that the Health and Community Services Complaints Commissioner appear before the Committee within 12 months of the tabling of this report to advise on progress made towards implementing those recommendations that pertain to her responsibilities.

Hon. Ian Hunter MLC
Presiding Member

APPENDICES

APPENDIX 1: Example of university parchment purchasable online

Ph.D in Counseling NOW Only $195!!! (Reg. $590)



Progressive Universal Life Church

BE IT KNOWN THAT

having demonstrated knowledge and proficiency satisfactory to the Examining Committee and by the authority of the Board of Directors is awarded the Degree

Doctor of Philosophy in Counseling

and is entitled to all the privileges and rights accorded thereto.

Diploma signed and sealed this

____ day of _____, 20____

Pastor Jack J. Stahl, D.D.
EXECUTIVE DIRECTOR

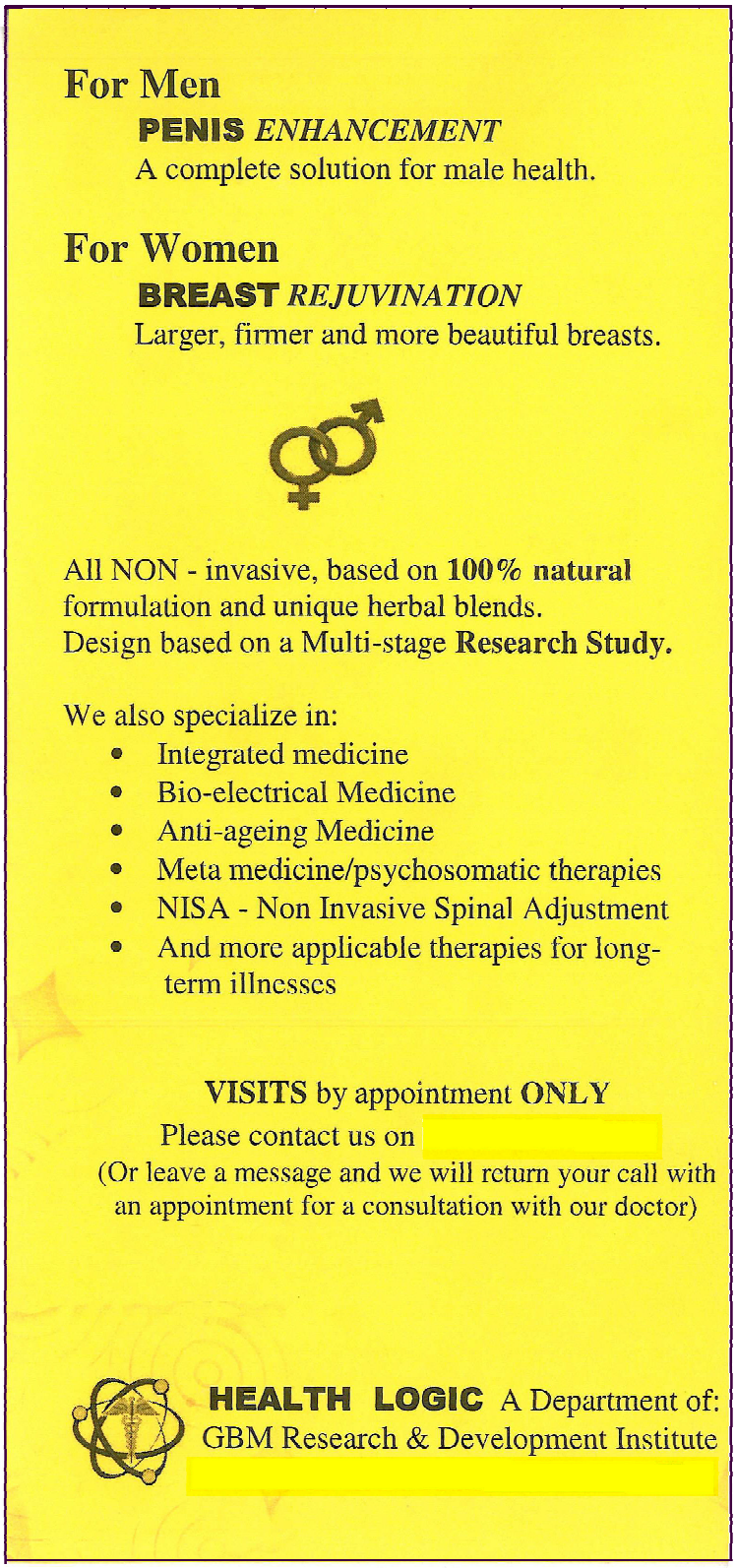
The Progressive Universal Life Church website also contains advertising that outlines the advantages of purchasing a Doctoral Degree and Title:

- Our prestigious Doctoral degrees grant you the legal right to be known as 'DOCTOR'! All titles we issue you may be used on your letterheads and business cards.
- This will be an automatic door opener! It immediately establishes you as a true professional.
- It gives you dignity in practicing Counseling, since people seeing a Counselor tend to think of it as 'seeing their Doctor.'
- The title 'doctor' will get you preferential treatment in public places ... Amen!

Interestingly, the website does contain the following proviso: You may NOT misrepresent yourself or imply you are a Doctor of Medicine.[164]

[164] Information obtained from the Progressive Universal Life Church www.pulc.com/degreecourses.php accessed online 12 January 2009.

APPENDIX 2: Example of misleading advertising material



For Men

PENIS *ENHANCEMENT*

A complete solution for male health.

For Women

BREAST *REJUVINATION*

Larger, firmer and more beautiful breasts.

All NON - invasive, based on **100% natural** formulation and unique herbal blends.
Design based on a Multi-stage **Research Study.**

We also specialize in:

- Integrated medicine
- Bio-electrical Medicine
- Anti-ageing Medicine
- Meta medicine/psychosomatic therapies
- NISA - Non Invasive Spinal Adjustment
- And more applicable therapies for long-term illnesses

VISITS by appointment **ONLY**

Please contact us on

(Or leave a message and we will return your call with an appointment for a consultation with our doctor)

HEALTH LOGIC A Department of:
GBM Research & Development Institute

Source: Advertising material provided to the Inquiry by Mr Fen Thompson. According to Mr Thompson, this material was distributed by Ms Elizabeth Goldway.

LIST OF WITNESSES

The following individuals and organisations provided oral submissions to the Inquiry.

17 March 2008

Health & Community Services Complaints Commission.

Ms Leena Sudano, Commissioner

14 April 2008

Australian Acupuncture & Chinese Medicine Association

Mr James Flowers, President
Mr Michael Porter, Board Member and Chair of State Committee
Ms Judy James, Chief Executive Officer

12 May 2008

National Herbalists Association of Australia

Ms Shauna Ashewood, Vice President
Ms Helen Stevenson, Executive Board Member

2 June 2008

Health Rights & Community Action Inc

Mr Antonio Russo, Member
Ms Pam Moore, Coordinator

16 June 2008

Medical Board of South Australia

Mr Joe Hooper, Registrar/Chief Executive Officer
Mr Bradley Williams, Manager, Professional Conduct Services

Department of Health

Mr David Filby, Executive Director, Policy and Intergovernment Relations

7 July 2008

Australian Traditional Medicine Society

Mr Raymond Khoury, Consultant

Mrs Shirley O'Donnell and
Mr Clayton O'Donnell

21 July 2008

Counselling Association of South Australia

Ms Joy Anasta

Dental Board of South Australia

Dr Donald Wilson, President

15 September 2008

Dr Nick Rieger

Council of Clinical Hypnotherapists

Mr Alan Stubenrauch, President
Mr Bruce Richardson, Vice President

13 October 2008

Mr Fen Thompson
Ms Bernadette Gough

Australian Medical Association (SA Branch)

Dr Peter Ford, President
Mr Duncan Wood, Chief Executive Officer

27 October 2008

Name withheld

Dept of Health

Ms Kaye Anastassiadis, Principal Policy Officer, Policy & Legislation Unit
Ms Lee Wightman, Principal Policy Officer, Policy & Legislation Unit

10 November 2008

Health and Community Services Complaints Commission

Ms Leena Sudano, Commissioner

16 February 2009

Mr Lubomir Batelka

LIST OF SUBMISSIONS

The following organisations and individuals provided written submissions to the Inquiry. Two additional submissions were received but the names have been withheld at the request of the writer.

Alexander, Ms G

Australian Acupuncture and Chinese Medicine Association

Australian College of Ambulance Professionals, South Australia

Australian Dental Association (SA Branch) Inc

Australian Hypnotherapists' Association

Australian Institute of Medical Scientists

Australian Medical Association (SA Branch) Inc

Australian Natural Therapists Association Ltd

Australian Register of Homeopaths Ltd

Australian Traditional Medicine Society Ltd

Bates, Ms S

Brown, L & W

Bullock, Mr L

Byrne, Ms A

Cosmetic Physicians Society of Australasia Inc

Council of Clinical Hypnotherapists, Australia

Counselling Association of South Australia Inc

Del Moro, Mr A

Eatts, Ms K

Edwards, Mr R

Feldman, Mrs S

Franceschini, Ms D

Health Rights and Community Action Inc

Gordon, Mr P

Hodges, Mr A

Hypnosis Associations of Queensland

Iacobucci, Ms J

Ishaq, Ms I

Jeromin, Ms G

Jones, Mrs M

Kruger, Mr P

Leach, Dr M

Logozzo, Ms R

Longmate, Ms G

Martin, Ms S

Medical Board of South Australia

McGill, Ms L

National Herbalists Association of Australia

O'Connor, Mr A

O'Donnell, Mrs S

Pfeiffer, Ms L

Physiotherapy Board of South Australia

Roberts, Ms J

Rose, Ms P

South Australian Psychological Board

South Australian Society of Hypnosis

Therapeutic Goods Administration – Office of Complementary Medicines

Urh, Ms S

Volovich, Ms N

Wood, Mr K

Woodman, Mrs J

Williams, KD & GJ

Wright, Ms V

The following organisations and individuals responded to the Committee's request for specific information relating to their operations.

Australian Association of Social Workers (SA Branch)

Australian Health Insurance Association

Brunt, Ms E

Chiropractic & Osteopathy Board of South Australia

Dental Board of South Australia

Flinders University

Goldway, Ms E

Health Care Complaints Commission (New South Wales)

Nurses Board of South Australia

Office of Consumer and Business Affairs, South Australia

Ombudsman, South Australia

Optometry Board of South Australia

Orthoptic Association of Australia (SA Branch)

Pharmacy Board of South Australia

Speech Pathology Association of Australia Ltd

University of Adelaide

University of South Australia

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Beyerstein B L. Why Bogus Therapies Often Seem to Work, at www.quackwatch.com/01QuackeryRelatedTopics/altbelief.html [accessed online 15May 2008].

NSW Health Care Complaints Commission at www.hccc.nsw.gov.au/html/Code_Contuct_Unregistered_page.htm [accessed 4 September 2008].

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