



## Regulation 26

### Standards of professional practice

#### 26. Standards of professional practice

Pursuant to article 7.3 of the Constitution:

- 7.3.1: The Council has the power from time to time to make, amend, repeal all such regulations as it deems necessary or desirable for the proper conduct and management of the College, the regulation of its affairs and the furtherance of its objectives.

Noting that:

- 7.3.3: No regulation shall be inconsistent with, nor shall it affect the repeal or modification of, anything contained in the Constitution.

#### 26.1 Purpose

- 26.1.1 Promote high standards of performance and professionalism and compliance with ANZCA standards, the *Professionalism and Performance Guide* and code of conduct by fellows.
- 26.1.2 Describe the formal processes that the college may take in accordance with the college's "*Notifications and Management of Complaints and Concerns Policy*" (the policy) so that all fellows and Professional Practice Review Panel (the panel) members involved may understand these processes.

#### 26.2 Introduction

- 26.2.1 The policy describes the approach used by the college, including the Faculty of Pain Medicine, to address and resolve complaints and concerns about fellows, trainees and specialist international medical graduates (SIMGs).
- 26.2.2 This regulation describes the formal processes for notification about fellows (those about trainees and SIMGs are dealt with under other regulations).
- 26.2.3 Notifications will be triaged according to the policy.
- 26.2.4 Those notifications that are considered to be more serious or complex which includes, for example, continued failure to comply with the ANZCA continuing professional development (CPD) standard or repeated breaches of the code of conduct, may be referred to a panel to recommend action by the college.
- 26.2.5 The role of the panel is to advise council on the details of the alleged breaches and recommend actions that council should consider.
- 26.2.6 Those notifications initially considered to reach level two as defined in the policy, but whose resolution was unsuccessful (e.g. failure to sign the deed of undertaking) may be referred by the executive committee to the panel to advise on further action by the college.
- 26.2.7 Those notifications that are less serious or are about single, isolated incidents will be dealt with by counselling, rather than under this regulation.

#### 26.3 The Panel

- 26.3.1 The chief executive officer will appoint panel members on the advice of the executive committee to hear the matter of the notification.

- 26.3.2 The panel will comprise at least two members, one of whom will be appointed as chair, and will include at least one fellow. One member will be from the special interest to which the matter pertains, and at least one not from that area of specialist interest.
- 26.3.3 The chair will be a person with experience in and knowledge of procedural fairness and the rules of natural justice.

#### **26.4 Terms of Reference of the Panel**

- 26.4.1 To enquire into the matter referred by the chief executive officer.
- 26.4.2 To observe the rules of procedural fairness and natural justice.
- 26.4.3 To hear from the fellow who is the subject of the notification (referred to as the respondent in the policy).
- 26.4.4 To gather such other information as required to understand the matter and reach a decision.
- 26.4.5 To recommend to the chief executive officer one of the following outcomes:
  - 26.4.5.1 Dismiss the matter after consideration by the panel;
  - 26.4.5.2 Refer the matter to an appropriate authority;
  - 26.4.5.3 Reprimand the fellow, which may include loss of privileges (refer to the policy);
  - 26.4.5.4 Require the fellow to undergo remediation;
  - 26.4.5.5 Refer the matter to ANZCA council for consideration of termination of fellowship under clause 4.2 of the constitution.
- 26.4.6 The panel may also assess the need for support for the fellow's wellbeing and make recommendations to the chief executive officer.
- 26.4.7 The executive committee will make a determination of the outcome:
  - 26.4.7.1 If outcomes 26.4.5.1 – 26.4.5.4, it will finalise the outcome and advise Council of that outcome;
  - 26.4.7.2 If outcome 26.4.5.5, it will refer the matter to ANZCA council for consideration of termination of fellowship under clause 4.2 of the constitution.

#### **26.5 Matters that may be referred to a panel**

- 26.5.1 Notifications that reach levels three or level four of the policy. These may include allegations of:
  - 26.5.1.1 Professional standards breaches, including poor clinical standards or outcomes and/or failure to comply with the CPD policy (link);
  - 26.5.1.2 Unacceptable behaviours such as bullying, discrimination or sexual harassment;
  - 26.5.1.3 Behaviours inconsistent with the code of conduct or the *Supporting Anaesthetists Professionalism and Performance Guide*;
  - 26.5.1.4 Unacceptable behaviours that occur during training and assessment.
- 26.5.2 An adverse finding against a fellow in relation to his or her professional conduct by a regulatory authority.
- 26.5.3 The imposition of conditions or undertakings (including voluntary undertakings) on a fellow's right to practise (i.e. registration) by a regulatory authority.
- 26.5.4 Matters referred to ANZCA by a regulatory authority.
- 26.5.5 In the absence of a notification, other alleged breaches of the code of conduct or behaviours inconsistent with the *Supporting Anaesthetists Professionalism and Performance Guide* that the executive committee believes to reach levels three or four as defined in the policy.

#### **26.6 Meetings of the panel**

- 26.6.1 The panel may meet in person or by electronic means.

- 26.6.2 The chief executive officer will provide access to or copies of all relevant material to the panel, including copies of the policy, the relevant code of conduct and the Supporting Anaesthetists Professionalism and Performance Guide.
- 26.6.3 Administrative support for the panel will be organised by the ANZCA Corporate Office.
- 26.6.4 The fellow who is the subject of the notification will be advised of
- 26.6.4.1 The intention of the panel to consider the notification;
  - 26.6.4.2 the time, date and place of the meeting;
  - 26.6.4.3 the particulars of the notification under consideration, including all details of the notification to allow the fellow to fully respond to the notification and to meet the rules of natural justice;
  - 26.6.4.4 the option to attend in person and give oral and/or written submissions about the notification, which shall be given due consideration by the panel.
- 26.6.5 The proceedings of the panel will be confidential except for appropriate reporting as outlined in this regulation.
- 26.6.6 The panel will not be bound by the rules of evidence and can consider all relevant information that it considers fit and may invite any person to appear before it or to provide information to it, subject to observing the rules of natural justice.
- 26.6.7 The panel will proceed as expeditiously as possible and with as little formality as possible.
- 26.6.8 The panel may make its own enquiries and seek legal or other professional advice.
- 26.6.9 A fellow attending a hearing of the panel may be accompanied by a support person to provide emotional support or advice.
- 26.6.10 A panel hearing is not a legal forum, therefore an advocate or legal representation is not permitted unless approved in advance by the panel.
- 26.6.11 Minutes of the panel may be confined to a report of the decision made by the committee.

## **26.7 Reconsideration, review and appeal**

Any person who is adversely affected by and dissatisfied with a decision made under this regulation may apply to have the decision reconsidered. Subsequent applications may be made for review and then appeal. All such applications must be made under regulations 30 and 31.

## **26.8 Definitions and interpretation**

In these regulations:

- 26.8.1 "Constitution" means the Constitution of the Australian and New Zealand College of Anaesthetists as amended from time to time;
- 26.8.2 "Regulations" means any regulations, made in accordance with clause 7.3;
- 26.8.3 "Code of conduct" means the code of conduct of the regulatory authority (Medical Board of Australia or Medical Council of New Zealand) of the jurisdiction in which the fellow practises.
- 26.8.4 Headings and boldings do not affect the interpretation.
- 26.8.5 Unless otherwise specified, or the contrary intention appears in these regulations:
- 26.8.5.1 Where a word or phrase is defined in the Constitution the word or phrase has the same meaning throughout these regulations;
  - 26.8.5.2 The singular includes the plural and vice versa; and
  - 26.8.5.3 A person includes an individual, a body corporate, a partnership, a firm, unincorporated association or institution and a government body.
- 26.8.6 These regulations shall come into operation on the date they are approved and adopted by the Council.

*February 2017 (in toto)*

*April 2018 (in toto)*