



Private and Confidential

SD24/29488 SF23/230

Mr David Farrell
Principal
Goldrick Farrell Mullan Lawyers

By Email: [REDACTED]

Dear Mr Farrell

Re: Dr Winston Cheung

I refer to your letter dated 12 April 2024 regarding your client, Dr Winston Cheung.

Adopting the order of the matters as set out in your letter of 12 April 2024, I respond as follows:

1. As to Item 1, I confirm that Ms Juliette Rex, Employee Relations Manager of Sydney Local Health District (SLHD), wrote to Dr Cheung, dated 10 November 2023, setting out the allegations and concerns raised against him.
2. As to Items 2 (A) (1) and (2) and Items (3) (B) to (D), it is noted that Dr Cheung wrote to Ms Rex by letter, dated 21 November 2023, setting out the matters you have indicated.
3. As to Item 3, I confirm that Ms Rex referred to the NSW Health Policy Directive (PD2016_046) *Resolving Workplace Grievances* in her letter of 3 January 2024 to Dr Cheung.
4. As to the matters raised in Items 4(A) to 4(H):
 - a. I propose to first respond to Dr Cheung's letter of 9 February 2024.
 - i. In the second paragraph you stated that Ms Rex's letter of 10 November 2023 failed to identify the PD2016_046 to which she was purporting to act under, and this failure is a clear failure to act with fairness and denied Dr Cheung natural justice.
 - ii. Whilst Ms Rex's letter of 10 November 2023 omitted the reference to PD2016_046, Ms Rex would have relayed this information to Dr Cheung at the preliminary meeting. However, as that meeting did not transpire, your assertion that Ms Rex failed to act with fairness and denied Dr Cheung natural justice is inaccurate, particularly in circumstances where Ms Rex invited Dr Cheung to attend a preliminary meeting to respond to the allegations and concerns raised.
 - iii. At paragraph 6 of your letter of 9 February 2024, you stated Dr Cheung wrote "...I note I invited you to identify in the minutes the basis of each allegation and you have refused to do so. This refusal denies me fairness and natural justice."
 - iv. I refer you to paragraph 2 (a) and (b) of Ms Rex's letter to you dated 3 January 2024. Ms Rex stated "...I intend to refer to and rely on these minutes in their entirety." Ms Rex does respond to Dr Cheung's question when she indicated that the entirety of the CRGH Medical

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Staff Council Meeting with the Executives on 12 October 2023 and SLHD Medical Staff Executive Council Meeting on 4 August 2023 will be relied upon in its entirety. Whilst Ms Rex's response to your question appears not to have been satisfactory to Dr Cheung, the assertion that Dr Cheung has been denied fairness and natural justice is inaccurate.

- v. At paragraph 8 of Dr Cheung's letter dated 9 February 2024, he also stated "... *It is clear that this is the first step that you should have taken under the policy, and I ask that you explain why you failed to follow Clause 2.2*".
- vi. It is acknowledged that PD2016_046 refers to clause 2.2 Self Resolution – (Level 1) workplace grievances. Please be advised that Ms Rex did not pursue Self Resolution with Dr Cheung, because the complainant, Dr Andrew Hallahan, indicated in his complaint that "*Noting the role that Dr Cheung has as MSC Chair and the importance of collegial and positive interaction with my role my view is that it is important to address this matter formally and comprehensively and this will not be possible using a level 1 approach.*"
- b. Dr Cheung has indicated "*he did not understand why HR was controlling the process. He stated that Clause 4.3 states that his immediate manager should take the lead in dealing with workplace issues. HR's role is to provide support for the manager and provide advice*".
- c. Dr Hallahan's complaint was not raised with Dr Cheung's line manager. Dr Hallahan's complaint about Dr Cheung was raised directly with me in my role as the Director of Workforce and Corporate Operations of SLHD. In my role, I nominated that Ms Rex undertake a review of the concerns raised by Dr Hallahan as given the nature of the concerns raised, these were matters that Workforce Services can appropriately assess and manage.

Correspondence dated 27 February 2024

You assert that my letter to Dr Cheung, dated 27 February 2024, does not comply with NSW Health Policy Directive (PD2016_046) *Resolving Workplace Grievances*.

You also asserted that:

- "*It is obviously an unfair process to make findings under the NSW Health Managing Misconduct and Prevent and Management of Bullying in NSW Health and NSW Health Code of Conduct without providing notice to Dr Cheung that these were policies he had to consider*".
- "*If you were at all times investigating under these policies, then Juliette Rex's letter dated 3 January 2024 made deliberately false and misleading representations*".

In response to these matters raised, I advise:

- a. I have read your letter to assert that the findings from the initial assessment did not comply with the processes required under PD2016_046.
- b. I have also read your letter to assert that I should have made comment with respect to allegations concerning Dr Alicia Smiech and Dr Teresa Anderson and those allegations similarly did not meet the threshold of bullying. I am unclear as to this reference but in any event, I confirm the complaint raised by Dr Hallahan concerned Dr Cheung's alleged conduct and impact it had on Dr Hallahan.
- c. With reference to the policy process undertaken, PD2016_046 provides "*Where a staff member has had a grievance raised against them, they must be provided with sufficient information to be able to adequately respond to the matters raised*".
- d. Ms Rex's letter of 10 November 2023 to Dr Cheung set out sufficient information about the allegations and concerns raised against him to be discussed at their preliminary meeting.

- e. Consistent with clause 2.3 Assisted Resolution (Level 2) workplace grievances of PD2016_046, an initial assessment was undertaken as per clause 2.3.2 which provides "*When a manager receives notification of a level 2 grievance, they must undertake an initial assessment to determine the nature of the concern raised, and whether the issue should be managed according to this policy or others (See Attachment 1).*"
- f. With reference to clause 2.3, it was therefore required of Ms Rex to review whether the nature of the concern was such that it should be managed under the PD2016_046 or another policy.
- g. Ms Rex's initial assessment provided "*In light of this review and information available and assessed, the allegations do not meet the threshold of misconduct or that of bullying and harassment as defined in the NSW Health Managing Misconduct (PD2018_031) and Prevention and Management of Bullying in NSW Health (PD2021_030).*"
- h. This served the purpose of clarifying as per clause 2.3.2 Attachment 1: Initial assessment, that the nature of the issues/complaint of Dr Hallahan did not meet the definition of "misconduct" under NSW Health Managing Misconduct Policy (PD2018_031) or "bullying" and "harassment" under NSW Health *Prevention and Management of Bullying in NSW Health* (PD2021_030). As such, these allegations and concerns were not required to be managed under these policies.
- i. This is confirmed in Ms Rex's initial assessment where Ms Rex outlined that the NSW Health policy directives applicable were:
 - NSW Health Policy Directive (PD2016_046) *Resolving Workplace Grievances*; and
 - NSW Health Policy Directive (PD2015_049) *NSW Health Code of Conduct*.
- j. As the initial assessment highlighted behavioural and communication concerns in Dr Cheung's engagement with Dr Hallahan, Ms Rex recommended that a mediation occur between Dr Cheung and Dr Hallahan. Further, that Dr Cheung and Dr Hallahan be provided with an outcome letter in relation to the findings of this initial review; and this correspondence remind Dr Cheung to comply with his obligations under the NSW Health Code of Conduct (PD2015_049).
- k. In my role as the decision maker, I gave effect to the above recommendations and in noting the nature of the findings reached in the initial assessment, I sought that Dr Cheung provide an apology to Dr Hallahan.
- l. I appreciate Dr Cheung may disagree with the findings and actions I sought; however, I must note Dr Cheung was provided with every opportunity to participate in this process and at no time provided his response to the concerns raised by Dr Hallahan.
- m. Having considered these matters:
 - i. I consider the assertion that SLHD provided deliberately false and misleading representations to Dr Cheung is misplaced and rejected; and
 - ii. The findings made by Ms Rex were appropriate having considered the concerns raised by Dr Hallahan against Dr Cheung under the following NSW Health policies:
 - NSW Health Policy Directive (PD2016_046) *Resolving Workplace Grievances*; and
 - NSW Health Policy Directive (PD2015_049) *NSW Health Code of Conduct*.
- n. In light of the above, I do not support the request to withdraw improper "findings" as you have asserted.

Accordingly, I propose to advance with the suggested mediation between Dr Cheung and Dr Hallahan. However, Dr Cheung ought also be aware that under clause 2.3.5 of PD2016_046, he has the right to request a review of outcome which if accepted, will be "*undertaken by a senior member of management or an external party not involved in the original decision*".

If Dr Cheung seeks to advance consideration of a request pursuant to clause 2.3.5 of PD2016_046, please advise. Otherwise, I will arrange the mediation as previously outlined.

Please provide clarification on the above within 7 days from the date of this letter.

I also take this opportunity to reiterate the services of the Employee Assistance Program that are available to Dr Cheung. This free and confidential counselling service can be contacted by telephone on 9515 9680.

Yours sincerely



Gina Finocchiaro
Director Workforce & Corporate Operations

Date: 30 April 2024