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Reply to Sydney Office

8 May 2024

Our Ref:
 Your Ref PER/25040690

Gina Finocchiaro
 Director Workforce & Corporate Operations
 Sydney Local Health District
 Level 11 North, King George V Building
 83 Missenden Road

By Email: [REDACTED]

CC Nathan Rudd
Juliette Rex

Dear Dr Finocchiaro ,

RE: DR WINSTON CHEUNG

We refer to your letter dated 30 April 2024.

In our letter dated 12 April 2024 we provided the background to the matter and asked the following:

We require within 14 days

1. *An explanation on why SLHD provided deliberately false and misleading representations to Dr Cheung.*
2. *If your claim is that you did not provide deliberate false and misleading representations to Dr Cheung then provide an explanation for making findings under the NSW Health Managing Misconduct and Prevention and Management of Bullying*

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in NSW Health and NSW Health Code of Conduct policies without informing Dr Cheung that these were policies, he should address.

3. *A withdrawal of the improper "findings".*

In paragraph 3 of your letter, you acknowledge that Juliette Rex first identified the policy she was claiming to act under in her letter dated 3 January 2024 when responding to Dr Cheung's letter dated 21 November 2023.

We note for the first time in paragraphs 4 (a-c) of your letter SLHD responds to Dr Cheung's letter dated 9 February 2024. No explanation for your failure to respond prior to receiving our letter is provided.

In your response you admit that the letter dated 10 November 2023 from Juliette Rex does not identify a policy. Your attempted excuse of her failure is that she would have relayed this to Dr Cheung at a proposed meeting. This is an untenable proposition because:

1. A fair process required that Dr Cheung be advised under what policy the proposed meeting was taking place before he attended.
2. Dr Cheung was under no obligation to attend any meeting until he was advised the policy under which it was purportedly being convened.
3. NSW Policy Directive *Resolving Workplace Grievances* has a set procedure for issue resolution under clause 2.3.4 and the proposed meeting was not one of the options available. The policy detail was set out in detail by Dr Cheung in his letter dated 9 February 2024.

You make various assertions under the heading "Correspondence 27 February 2024" all of which we reject. The policy was not referred to in Juliette Rex's November letter and your assertion despite failing to identify NSW Policy Directive *Resolving Workplace Grievances* that she managed to comply with some parts of the policy is without any merit.

As soon as she received Dr Cheung's letter dated 21 November 2023, she was required not only to identify the policy but explain how her first correspondence came within the policy. Dr Cheung went through the requirements of the policy in detail in his letter dated 9 February 2024 and after that correspondence neither you or Juliette Rex could claim to be under a misapprehension of what the policy contained and what was required of SLHD to comply with the policy in this matter. The fact that the first time any attempt was made to respond to the points made in Dr Cheung's letters was after a lawyer's letter was sent establishes the unfairness of your process in this matter. A proper response was required to both letters.

The determination that the allegations do not meet the threshold of misconduct or bullying is an initial step and should have been addressed immediately upon receipt of the allegations and under the policy that is the end of the matter. No preliminary meeting was required.

There is no role for a decision maker under NSW Policy Directive *Resolving Workplace Grievances* once the initial assessment is made that there was no bullying or misconduct the matter is closed.

As far as we can determine from your letter :

1. In response to question 1 you are asserting :

That Juliette Rex eventually complied with NSW Policy Directive *Resolving Workplace Grievances* and she only applied the one policy so she did not mislead Dr Cheung.

2. In response to question 2 you are asserting:

That it was Gina Finochiaro who decided to apply and make findings without notice to Dr Cheung under the following policies.

- *the NSW Health Code of Conduct (PD2015_049)*
- *NSW Health Managing Misconduct (PD2018_031)*
- *Prevention and Management of Bullying in NSW Health (PD2021_030) Policies*

We will give you until 5pm Monday 13 May 2024 to provide your response to our understanding of your letter set out above. We have advised our client that he should make a formal complaint concerning your conduct.

Clearly this complaint will require an independent investigator and we will deal with that issue once we have your response.

Yours faithfully

GOLDRICK FARRELL MULLAN

David Farrell