



Special Commission of Inquiry
Acute Care Service in NSW Public Hospitals

First Report of the Special Commission of Inquiry

Inquiry into the circumstances of
the appointment of Graeme Reeves by
the former Southern Area Health Service

Peter Garling SC

31 July 2008

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in NSW Public Hospitals, 2008.

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Special Commission of Inquiry
Acute Care Services in NSW Public Hospitals

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31 July 2008

Her Excellency Professor Marie Bashir AC CVO
Governor of the State of New South Wales
Office of the Governor
Macquarie Street
SYDNEY NSW 2000

Your Excellency,

I was appointed by Letters Patent issued on 29 January 2008 under the *Special Commissions of Inquiry Act 1983* (NSW) (the Act) to inquire into and report to Your Excellency on matters concerning the delivery of acute care services in public hospitals in New South Wales.

As part of the Inquiry, I determined to investigate the circumstances surrounding the appointment in 2002 of former registered medical practitioner Graeme Stephen Reeves to a position as visiting medical officer in obstetrics and gynaecology by the former Southern Area Health Service. I am now in a position to present my report in relation to that investigation.

I present the First Report of the Special Commission for Your Excellency's consideration.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter Garling'.

Peter Garling SC
Commissioner

Table of contents

Table of contents	i
Executive summary	iii
Summary of recommendations	ix
1 Inquiry into the appointment of Graeme Reeves	1
Terms of Reference.....	2
What this report deals with	2
My investigation.....	3
Other complaints concerning Dr Reeves.....	4
2 Dr Reeves' medical career until 2002	5
Dr Reeves' Medical Training	6
Complaints before 1997	6
Referral to a Professional Standards Committee	8
Concerns about compliance with orders and conditions	11
Inclusion in Impaired Registrants Program	13
Termination of appointment at Hornsby and impairment review	13
Performance Assessment Program	16
3 Appointment of Dr Reeves by the Southern Area Health Service	19
Background to appointment	20
Application for appointment.....	23
The appointment processes	28
Temporary appointment as locum.....	36
Offer of Fee-For-Services Contract	38
Dr Reeves' notification of appointment to the Medical Board.....	40
4 Policies and practices: the appointment of a visiting practitioner	45
Applicable policies.....	46
Credentialing and clinical privileging processes.....	49
Appointments process.....	50
Checking registration status	52
Checking past performance and referee reports.....	53
Job descriptions and advertisements	55
Criminal record check.....	56
Temporary appointment	56
5 Discovery of Obstetrics Ban	59
Breaches of the order by Dr Reeves.....	60
Tensions between Dr Reeves and nursing staff.....	65
Discovery of obstetrics ban by Area Health Service	67
Response of the Area Health Service	69
Section 66 Inquiry at the Medical Board.....	74

Events after the Section 66 Inquiry: termination of appointment and de-registration.....	77
6 The availability of information from the NSW Medical Board.....	81
Orders and conditions	82
The Register of Medical Practitioners	82
Hypothetical request to the Medical Board about registration.....	83
Improvements to correspondence from the Medical Board.....	85
Availability of judgments and orders of PSC	85
Notification of orders and conditions under <i>Medical Practice Act</i>	86
Amendments to the <i>Medical Practice Act</i>	87
7 Findings and proposals for change.....	91
The conduct of Dr Reeves.....	92
Recruitment practices and policies for visiting practitioners	95
Management of complaints and obstetric ban by the Southern Area Health Service	104
Appendix 1	111

Executive summary

Facts

1. Former medical practitioner Graeme Stephen Reeves became a fellow of the Royal Australian College of Obstetricians and Gynaecologists in 1983.
2. In 1997, a Professional Standards Committee, constituted in accordance with the *Medical Practice Act 1992*, made orders reprimanding Dr Reeves for unsatisfactory professional conduct and requiring him to cease the clinical practice of obstetrics.
3. The Professional Standards Committee also imposed 8 “impairment” conditions on his registration which required that the balance of his medical practice be supervised by another medical practitioner and that his mental health be monitored (including by attending a Board-appointed psychiatrist at specified intervals).
4. The Professional Standards Committee also made findings about Dr Reeves’ professional conduct arising out of a number of complaints concerning his management of 9 obstetric patients at Hornsby Ku-ring-gai Hospital, The Hills Private Hospital and the Sydney Adventist Hospital where he held appointments as a visiting medical officer in gynaecology and obstetrics.
5. Between 1997 and 2002, Dr Reeves had frequent interactions with the New South Wales Medical Board due, principally, to the Medical Board’s responsibility to manage matters arising under the “impairment” conditions imposed by the Professional Standards Committee.
6. In August 1999, Dr Reeves was included in the ‘Impaired Registrants Program’ administered by the Medical Board.
7. On 30 November 2001, the Medical Board required Dr Reeves to attend an Impaired Registrants Panel with a view to revising the conditions on his practice. The Impaired Registrants Panel made 8 conditions, in agreement with Dr Reeves, which are set out at paragraph 2.58 of the Report. The order banning Dr Reeves from practising obstetrics remained unchanged. Only the Medical Tribunal had the power to remove or vary that order. The Medical Tribunal is constituted under the *Medical Practice Act 1992* to adjudicate on allegations of professional misconduct by medical practitioners and, like Professional Standards Committees, is legally separate from and independent of the Medical Board.
8. On 27 December 2001, the Medical Board sent to Dr Reeves a letter containing a list of the impairment conditions attaching to Dr Reeves’ registration as a result of his attendance at the Impaired Registrants Panel on 30 November 2001. The Medical Board’s letter did not refer to the order of the Professional Standards Committee of 1997 banning Dr Reeves from the practice of obstetrics.
9. On 10 February 2002, Dr Reeves applied for appointment as a visiting medical officer to the former Southern Area Health Service. Dr Reeves provided the Southern Area Health Service with a number of documents, including a curriculum vitae and a copy of a letter to him from the New South Wales Medical Board dated 27 December 2001.
10. On 24 April 2002, the former Southern Area Health Service appointed Dr Reeves as a visiting medical officer with clinical privileges in obstetrics and gynaecology. The appointment was for a period of approximately 4 years and required him to

provide services at Pambula District Hospital and Bega District Hospital. Dr Reeves had also received a temporary appointment to act as locum specialist obstetrician gynaecologist at Pambula District Hospital between 10 and 13 April 2002.

11. After his appointment in April 2002, Dr Reeves performed obstetric services at Bega and Pambula District Hospitals, including by participating in a roster to perform caesarean sections. He agreed to join that roster in May 2002.
12. On 31 October 2002, the Director of Medical Services of the Southern Area Health Service was prompted to make contact with the Medical Board as a result of problems that had arisen in Dr Reeves' relationships with staff at Pambula District Hospital. He telephoned the Medical Board to seek information that might be of assistance in the management of Dr Reeves' depressive illness.
13. On 13 November 2002, both the Medical Board and the Southern Area Health Service discovered that Dr Reeves had been granted an appointment requiring him to provide medical services which he was not legally entitled to provide.
14. As soon as the discovery was made, the Medical Board wrote letters to Dr Reeves and the Southern Area Health Service confirming the order prohibiting him from practising obstetrics. The Director of Medical Services of the Southern Area Health Service also contacted Dr Reeves and directed him to cease all obstetric work. Dr Reeves gave an undertaking to the Southern Area Health Service that he would cease all obstetric practice. He made similar statements to the Registrar of the Medical Board.
15. Dr Reeves' appointment with the former Southern Area Health Service remained on foot subject to his undertaking not to practise obstetrics. However, Dr Reeves provided further obstetric services at Pambula and Bega District Hospitals in December 2002 and January 2003, contrary to his undertakings.
16. On 9 January 2003, memoranda were sent to all medical officers and maternity and theatre staff at both Bega and Pambula District Hospitals to the effect that Dr Reeves did not have clinical privileges in obstetrics. He was, however, still entitled to practise gynaecology at those hospitals. In the absence of receiving any evidence, the Inquiry has not investigated whether Dr Reeves practised obstetrics again after 9 January 2003.
17. Subsequently, in 2004, the Health Care Complaints Commission lodged a complaint with the Medical Tribunal alleging that Dr Reeves had practised obstetrics contrary to the order upon his registration banning him from such practice and that he had deliberately failed to inform the Southern Area Health Service of the order during the recruitment process. The Medical Tribunal found that Dr Reeves had engaged in professional misconduct of the most serious kind and ordered that his name be removed from the Register of Medical Practitioners.

My Inquiry

18. On 29 January 2008, Her Excellency, Professor Marie Bashir AC, CVO, the Governor of New South Wales, appointed me to inquire into and report on matters concerning the delivery of acute care services in New South Wales Public Hospitals pursuant to letters patent issued under the authority of the *Special Commissions of Inquiry Act 1983* (NSW).

19. The first of the Inquiry's Terms of Reference requires me to inquire into and report on:

any systemic or institutional issues in the delivery of acute care services in NSW public hospitals raised in submissions you receive that you consider appropriate for you to inquire into and recommend any changes which should be made to address them.

20. Term 6 of the Terms of Reference requires me to:

recommend any changes which NSW Health should make to ensure that its workforce policies and practices support improved models of patient care.

21. Early in my Inquiry, I decided to inquire into the circumstances of the appointment of Dr Reeves by the former Southern Area Health Service.
22. I have reviewed the policies and practices existing at the time of Dr Reeves' appointment by the former Southern Area Health Service relating to the recruitment of visiting medical practitioners with a view to determining whether the Southern Area Health Service adhered to them. I have also inquired into the practices of the Medical Board in 2002 relating to the disclosure of any restrictions attaching to a medical practitioner's right to practise medicine in New South Wales, where such restrictions exist.
23. I have reviewed the policies applying as at 31 July 2008 to the appointment of senior medical staff (including visiting medical officers) by public health organisations in order to determine whether there are any gaps in the processes required to be adopted when 'screening' such staff. These include the credentialing, clinical privileging and appointments processes.

Findings

NSW Health policies

24. I find that, in 2002, there were deficiencies in the policies applying to the appointment of visiting medical practitioners, of both the Department of Health and the Southern Area Health Service, which contributed to the failure, on the part of the Southern Area Health Service, to detect, from the outset, the extent of the restrictions on Dr Reeves' right to practise medicine, his prior disciplinary history and past performance. The deficiencies were:
- There was no requirement to provide each member of a Credentials Committee, Medical and Dental Appointments Advisory Committee or board of the relevant public health organisation with a complete set of the applicant's application, including curriculum vitae and supporting documentation.
 - There was no requirement to include on the Credentials Committee or Medical and Dental Appointments Advisory Committee a medical practitioner from the speciality in which clinical privileges were sought.
 - There was no requirement to provide a written record of a structured referee check to the final decision-maker.
 - There was no requirement that checks be made of an applicant's past performance and disciplinary history.
 - There was no requirement to independently verify an applicant's registration status with the Medical Board.

25. Today, NSW Health policy requires independent verification of an applicant's registration status. The registration status of all registered medical practitioners can be ascertained by consulting the website of the Medical Board which contains the Register of Medical Practitioners. However, information about the content of any "impairment" conditions attaching to a doctor's registration is not publicly available without the doctor's consent. Impairment conditions do not include conditions or orders that prohibit a doctor from practising in a certain area (such as obstetrics).

Southern Area Health Service

26. In 2002, the Southern Area Health Service did not verify Dr Reeves' conditional registration with the Medical Board because Dr Reeves had provided to it the Medical Board's letter of 27 December 2001 disclosing his impairment conditions. I accept the evidence given on behalf of the relevant staff of the Southern Area Health Service that they understood that letter to contain the totality of the restrictions on Dr Reeves' entitlement to practise medicine. In my view, that interpretation was reasonable, for the reasons I explain further in this Report.
27. I find that in the period between 14 November 2002, when it discovered the ban on Dr Reeves' right to practise obstetrics, and 9 January 2003, the former Southern Area Health Service failed to take appropriate steps to prevent Dr Reeves from practising obstetrics. Those steps would have included:
- a written direction to Dr Reeves that he was not to practise obstetrics,
 - a formal convening of the Credentials Committee to confirm the reduction in his clinical privileges from obstetrics and gynaecology to gynaecology only, and
 - adequately communicating with the staff working alongside Dr Reeves, particularly in the labour ward, to alert them to the ban.
28. Although more robust steps could have been, and ought to have been, taken by the Area Health Service, the relevant Area Health Service staff could not have expected the level of defiance that Dr Reeves would show, despite the express directions given to him and his undertakings to stop practising obstetrics.
29. I have made findings against individuals involved in the appointment of Dr Reeves and the management of the issue after 14 November 2002 in relation to Dr Reeves' entitlement to practise obstetrics. My findings are listed in Chapter 7 of this Report.

NSW Medical Board

30. In 2002, the registration status of a registered medical practitioner was not available on the Internet. It was necessary, in order to find out whether a doctor had conditional registration and the content of any conditions, to contact the Medical Board. It was the practice of the Medical Board, on receipt of such an enquiry, to consult its paper files or a computer record relating to each registered medical practitioner's registration.
31. In 2002, most of the Medical Board staff knew about the order banning Dr Reeves from practising obstetrics because of Dr Reeves' lengthy disciplinary history. However, in 2002 the existence of the order banning him from obstetrics was not clearly identified within the Medical Board's computer record relating to Dr Reeves' registration. Even if a person on behalf of the Southern Area Health Service had contacted the Medical Board during the recruitment process in early 2002 to request a list of the conditions attaching to Dr Reeves' registration, I am not

satisfied that he or she would have been told that Dr Reeves was prohibited by an order from practising obstetrics.

Dr Reeves

32. I find that Dr Reeves' intentional and calculated dishonesty was the main reason he was recruited to a position that he was legally unable to fulfil. He deliberately represented to the Southern Area Health Service, in his written application, discussions and formal interview with the relevant officers of the Area Health Service, that it was his preference not to practise obstetrics and that the Medical Board's only interest in him was due to a depressive condition. Dr Reeves used the letter from the Medical Board dated 27 December 2001 as a means to mislead the Southern Area Health Service about the true scope of the limitations on his entitlement to practise medicine in New South Wales.

Summary of recommendations

Recommendation 1: NSW Health undertake a review of the operation of the provisions of the *Medical Practice Amendment Act 2008* relating to (a) critical compliance conditions or orders and (b) reportable misconduct, 12 months after the Act commences, to determine whether amendments are necessary to address the concerns outlined in paragraphs 6.44 and 6.47 to 6.48 of this Report. 89

Recommendation 2: The conduct of Dr Reeves in seeking and obtaining an appointment as a visiting specialist obstetrician and gynaecologist with the Southern Area Health Service be referred to the NSW Director of Public Prosecutions for consideration as to whether he ought be prosecuted for an offence or offences against the *Crimes Act 1900* (NSW) or any other legislation. 95

Recommendation 3: The question of whether it is appropriate to amend the *Medical Practice Act 1992*, and in particular the definition of unsatisfactory professional conduct, and any other related like legislation, so as to make plain whether individuals whose legal right to practise medicine is restricted ought be under any, and if so what, obligation to provide emergency medical care contrary to the restriction on their right to practise should be referred to the New South Wales Law Reform Commission for inquiry and report. 95

Recommendation 4: NSW Health ensure that it has policies applying to the appointment of senior medical officers (that is, visiting medical practitioners and staff specialists), which are implemented by all public health organisations, that require every member of each of (a) the Credentials (Clinical Privileges) Subcommittee, (b) the Medical and Dental Appointments Advisory Committee, (c) any interview subcommittee and, as well, (d) the final decision-maker, to have access to the entire written application, including any supporting documentation, of each applicant under consideration by the relevant committee or the final decision-maker. 97

Recommendation 5: NSW Health ensure that it has policies applying to the appointment of senior medical officers, which are implemented by all public health organisations, that require a medical practitioner from the specialty or sub-specialty in which privileges are sought to be included on each of (a) the Credentials (Clinical Privileges) Subcommittee and (b) the interviewing committee in respect of the appointment of a person as a senior medical officer. 99

Recommendation 6: NSW Health ensure that its model by-laws made pursuant to the *Health Services Act 1997* require a medical practitioner from the specialty or sub-specialty in which privileges are sought to be included on each of (a) the Credentials (Clinical Privileges) Subcommittee and (b) the interviewing committee in respect of the appointment of a person as a senior medical officer. 99

- Recommendation 7:** NSW Health ensure that it has policies applying to the appointment of senior medical officers, which are implemented by all public health organisations, that require a structured approach to reference checking, meaning either (a) that written referee reports are obtained from at least 2 referees addressing specified questions or (b) that verbal referee reports are obtained from at least 2 referees in response to specified questions and recorded in writing. 100
- Recommendation 8:** NSW Health ensure that there are in effect procedures which require verified compliance with all relevant policies prior to the appointment of a visiting medical practitioner or staff specialist. 100
- Recommendation 9:** NSW Health ensure that it has policies applying to the temporary appointment of visiting medical practitioners, which are implemented by all public health organisations, that require such appointments to be subject to the same screening requirements as for fixed term appointments, including appropriate structured referee checks. 104
- Recommendation 10:** NSW Health ensure that there are in effect procedures which require any reduction in the clinical privileges of a medical practitioner which results from the imposition of conditions or orders on the practitioner's registration to be promptly notified to clinical staff at any hospital for which the medical practitioner has been granted clinical privileges. 107

1 Inquiry into the appointment of Graeme Reeves

Terms of Reference.....	2
What this report deals with.....	2
My investigation.....	3
Other complaints concerning Dr Reeves.....	4

Terms of Reference

- 1.1 By Letters Patent issued on 29 January 2008 under the authority of the *Special Commissions of Inquiry Act 1983* (NSW), Her Excellency, Professor Marie Bashir, the Governor of New South Wales appointed me to inquire into and report on matters concerning the delivery of acute care services in public hospitals in New South Wales. The nature of those matters is specified in the terms of reference set out in the Letters Patent, which are found at Appendix 1.

What this report deals with

- 1.2 Shortly after my Inquiry was established, I determined that I should inquire into and report on systemic issues brought to light by the circumstances of the appointment in 2002 by the former Southern Area Health Service of a medical practitioner, Graeme Stephen Reeves,¹ to the position of visiting medical officer in obstetrics and gynaecology. Dr Reeves was appointed to that position in circumstances where his registration as a medical practitioner was subject to an order banning him from the clinical practice of obstetrics.
- 1.3 The appointment of Dr Reeves to a position in which he was granted clinical privileges in obstetrics notwithstanding his conditional registration banning him from such practice raises a number of systemic issues relating to the proper functioning of the public health system in New South Wales. Term 1 of the Terms of Reference requires me to inquire into and report on:

any systemic or institutional issues in the delivery of acute care services in NSW public hospitals raised in submissions you receive that you consider appropriate for you to inquire into and recommend any changes which should be made to address them.

- 1.4 Term 6 of the Terms of Reference requires me to:

recommend any changes which NSW Health should make to ensure that its workforce policies and practices support improved models of patient care.

- 1.5 The matters that I address in this report are the systemic issues raised by the appointment of Dr Reeves. The dominant issue relates to the processes for checking the credentials of a medical practitioner at the time of appointment as a visiting medical officer to a public health organisation, and subsequently. Credentials represent the formal qualifications, training, experience and clinical competence of the health care professional and are evidenced by such factors as registration by a professional body. Despite his lack of credentials to engage in the practice of obstetrics, Dr Reeves provided obstetric services to patients during the course of his appointment within the Southern Area Health Service in 2002 and 2003.

- 1.6 This report deals with my inquiry into the policies and practices in place in 2002 applying to the appointment of visiting practitioners to public health organisations and the performance of the Southern Area Health Service in appointing Dr Reeves. I have also conducted a review of the current processes for the appointment of visiting practitioners to New South Wales public hospitals for the purpose of determining whether any improvements should be made to those processes so as to ensure that only appropriately qualified medical practitioners are recruited as visiting practitioners.

My investigation

- 1.7 As a Commissioner, I am empowered to make findings of fact and recommendations about matters falling within the Terms of Reference. The other powers and duties of this Inquiry are set out in the *Special Commissions of Inquiry Act*. Section 7 of the *Special Commissions of Inquiry Act* empowers a Commissioner to hold hearings in connection with the Special Commission. Under section 7, hearings are required to take place in public unless for any reason a Commissioner is satisfied that it is desirable to direct that the hearing take place in private. In this case, the hearings were conducted in private. However, upon the completion of this report, the transcripts will be published on the Special Commission's website.
- 1.8 I have exercised the power to hold hearings in connection with the inquiry into the circumstances of the appointment of Dr Reeves in 2002 by the Southern Area Health Service. For that purpose, the following persons were summonsed under section 14 of the *Special Commissions of Inquiry Act* to attend the Special Commission and give evidence:
- Dr Reeves
 - Dr Denise Robinson, former Chief Executive Officer of the former Southern Area Health Service
 - Mr Gratton Wilson, Chairman of the Board of the former Southern Area Health Service
 - Dr Robert Arthurson, Area Director of Medical Services
 - Dr Jon Mortimer, Area Deputy Director of Medical Services
 - Dr Frank Simonson, GP obstetrician at Bega and Pambula District Hospitals
 - Mr Raymond Toft, Senior Nurse Manager
 - Mr Andrew Dix, Registrar and Chief Executive Officer of the New South Wales Medical Board
- 1.9 Each witness was examined separately, and in the absence of the other witnesses, such that no cross-witness questioning took place. All hearings took place at the Inquiry's offices and leave was granted for each witness who made such request to be represented by counsel and/or solicitor.
- 1.10 The Terms of Reference declare that sections 22, 23 and 24 of the *Special Commissions of Inquiry Act* apply to and in respect of the Inquiry. In order to enable the examinations to proceed in a timely and efficient manner, I determined that it was not necessary for the witnesses or those appearing on their behalf to object to any question on the basis that an answer may tend to incriminate them. I consider that all questions asked and all answers given fall into that category. I note that the provisions of subsection 23(2) of the *Special Commissions of Inquiry Act* will preclude the admissibility into evidence against Dr Reeves of his answers in any civil or criminal proceedings, subject to subsection 23(3).
- 1.11 Natural justice required the Inquiry to give to any individual against whom findings were potentially to be made notice of the relevant allegations, and an opportunity to address submissions to the Inquiry in relation to the allegations. This has occurred and I am now in a position to make findings about the conduct of the relevant persons who were involved in, or responsible for, the appointment of Dr Reeves as a visiting specialist obstetrician gynaecologist within the Southern Area Health Service in 2002. I am also in a position to make recommendations for change based upon those findings. My findings and proposals for change are set in Chapter 7.

Other complaints concerning Dr Reeves

- 1.12 The appointment of Dr Reeves by the Southern Area Health Service, and his practice as a medical practitioner generally, have received a significant amount of attention since this Inquiry was established, in both the media and Parliament. The controversy has a number of facets. One facet of the controversy involves a disturbing number of allegations, from former patients, relating to clinical malpractice and inappropriate professional behaviour whilst Dr Reeves was in medical practice. Many, although not all, of those allegations have been raised for the first time in 2008. Several of the accusations, which have been ventilated in the media, contain undercurrents, and in some cases, overt claims, of criminal conduct.
- 1.13 This Inquiry does not have the power to investigate and make findings about individual patients' complaints, regardless of the nature of the complaints. The New South Wales Parliament has tasked other bodies to deal with such matters, including the Health Care Complaints Commission (HCCC) and New South Wales Medical Board, under their enabling statutes. The investigation of complaints raising matters of a criminal nature falls within the responsibility of the NSW Police Force. The Terms of Reference for my Inquiry expressly require me to refer any individual patient complaints identified in the course of the Inquiry to the HCCC. I note that the HCCC has undertaken to look into all complaints about the former doctor and to cooperate with the NSW Police Force.²
- 1.14 In this report I do not make findings, or express any views, about the complaints made by patients concerning poor treatment or misconduct by Dr Reeves, regardless of when those complaints were made, how or where they were made or the time period to which they relate. The matters that I address in this report are the systemic issues noted above.

¹ Throughout this report, I refer to Graeme Stephen Reeves as Dr Reeves, notwithstanding his deregistration by order of the Medical Tribunal in 2004.

² Health Care Complaints Commission Media release dated 26 February 2008.

2 Dr Reeves' medical career until 2002

Dr Reeves' Medical Training	6
Complaints before 1997	6
Referral to a Professional Standards Committee	8
Professional Standards Committees	8
The Professional Standards Committee concerning Dr Reeves	9
Concerns about compliance with orders and conditions	11
Inclusion in Impaired Registrants Program	13
Termination of appointment at Hornsby and impairment review	13
Performance Assessment Program	16

Dr Reeves' Medical Training

- 2.1 In 1975, Dr Reeves graduated with the degree MB BS from the University of New South Wales. He had applied for registration as a medical practitioner in New South Wales on 12 December 1974 after the completion of his final year of undergraduate studies.
- 2.2 Before being fully registered with the New South Wales Medical Board on 13 December 1975, Dr Reeves was employed for approximately 12 months as an intern at St Vincent's Hospital. Thereafter, he was a resident medical officer at St Vincent's Hospital between 1975 and the middle of 1977.
- 2.3 Between 1977 and 1982, Dr Reeves was employed as a resident medical officer at the Royal Hospital for Women, Paddington, where he commenced his specialist training. His specialist training culminated in membership of the Royal Australian College of Obstetricians and Gynaecologists in 1982 and a grant of fellowship by the College in 1983. Dr Reeves applied to the Medical Board for registration of this additional qualification on 9 February 1983. The Register was amended accordingly on 2 March 1983.
- 2.4 Dr Reeves had a number of appointments as visiting medical officer before his appointment by the former Southern Area Health Service in 2002. In 1983, Dr Reeves was appointed as a visiting medical officer in obstetrics and gynaecology at the Royal Hospital for Women. In 1985, Dr Reeves was appointed by the Northern Sydney Area Health Service as a visiting medical officer in obstetrics and gynaecology to practise at Hornsby Ku-ring-gai Hospital. In the same year, he received similar appointments at the Sydney Adventist Hospital and at Baulkham Hills Private Hospital.

Complaints before 1997

- 2.5 Dr Reeves' professional conduct and clinical performance was the subject of numerous complaints during his appointment with the Northern Sydney Area Health Service at Hornsby Ku-ring-gai Hospital. Those complaints emanated from his colleagues as well as the patients he treated. The complaints were communicated to the Hospital and, in some instances, lodged formally with the HCCC.
- 2.6 This Inquiry has not been tasked to review the circumstances of Dr Reeves' appointment by the Northern Sydney Area Health Service or the processes followed in the management of the complaints made about him. This Inquiry has, however, had access to the entirety of the records held by Hornsby Ku-ring-gai Hospital relating to Dr Reeves' appointment at that hospital.
- 2.7 In early 2008, the Honourable Deirdre O'Connor was engaged by the NSW Health Department to conduct a review of material provided to her relating to the appointment, management and termination of Dr Reeves as a visiting medical officer by the former Northern Sydney Area Health Service and the former Southern Area Health Service. Dr Reeves' appointment by the Northern Sydney Area Health Service had come to an end in February 2001. His appointment by the Southern Area Health Service had been terminated on 11 July 2003. On 2 May 2008, the Honourable Deirdre O'Connor released her report.
- 2.8 The Honourable Deirdre O'Connor found that, over the approximately 15 years of Dr Reeves' appointment at Hornsby Ku-ring-gai Hospital as a visiting medical officer in obstetrics and gynaecology, a total of approximately 35 complaints were made about him relating to around 20 separate incidents. The first complaint about Dr Reeves was

dated June 1986. The complaints were made by nursing staff, medical staff and patients and related to various matters including:

- (a) Bullying, aggressive and inappropriate behaviour to staff and patients;
- (b) Inappropriately humiliating and condescending behaviour towards junior medical staff and nursing staff in front of patients, including making allegations of incompetence;
- (c) Failing to adequately communicate with staff about treatment and transfer plans for patients; and
- (d) Failing to offer patients adequate anaesthetic or analgesia during procedures.

- 2.9 On 22 March 1996, the Deputy Chief Executive Officer of Northern Sydney Area Health Service wrote to the Medical Board expressing concern about Dr Reeves' professional conduct. The letter attached correspondence detailing a number of complaints about his treatment of staff and the clinical management of 4 patients at the Hornsby Ku-ring-gai Hospital between 1994 and 1996. The letter advised the Medical Board that Dr Reeves' conduct had been the subject of deliberation by the Medical Appointments and Credentials Advisory Committee of the Northern Sydney Area Health Service. The letter set out that committee's conclusions and recommendations, which included a recommendation that the matters be referred to the Medical Board.
- 2.10 On 17 April 1996, the Health Committee of the Medical Board resolved that Dr Reeves attend for a psychiatric assessment with a view to determining whether he should be referred to an Impaired Registrants Panel under the *Medical Practice Act 1992 (NSW)*. The Impaired Registrants Program (or Health Program) is provided for under Part 5 of the *Medical Practice Act*. It is designed to enable the Medical Board to deal with medical practitioners or students suffering from an "impairment" in a constructive and non-disciplinary manner and to protect the public while maintaining impaired doctors in practice when it is safe to do so. When the Medical Board receives a credible notification about impairment, the medical practitioner is assessed by a Board-nominated practitioner to determine the extent and nature of the impairment. The medical practitioner then meets with an Impaired Registrants Panel and action is agreed with the practitioner. The most common outcome is that conditions are placed on the doctor's registration.
- 2.11 The referral of Dr Reeves to psychiatric assessment resulted in a report by a Board-appointed psychiatrist, Dr Woodforde, dated 15 May 1996. Dr Woodforde could find no evidence of psychiatric illness but expressed the opinion that "his pattern of behaviour would suggest troublesome personality traits".
- 2.12 On 19 June 1996, the Health Committee reviewed Dr Woodforde's report and decided not to refer Dr Reeves to an Impaired Registrants Panel. Rather, the Medical Board recommended to the Northern Sydney Area Health Service that the matter be dealt with by the hospital, including by referring Dr Reeves to appropriate counselling.
- 2.13 In August 1996, the Medical Board decided to review the Northern Sydney Area Health Service's complaint after receiving a letter from the Chairman of the Medical Advisory Committee at The Hills Private Hospital dated 31 July 1996. The letter noted a marked deterioration in the performance of Dr Reeves over the previous 12 months, manifested by repeated unprovoked verbal attacks on nursing staff. It also noted that, unrelated to these incidents, Dr Reeves had been involved in the death of a mother several days after she gave birth and that it was felt that his clinical management of this patient did not accord with acceptable standards. Finally, the letter advised that the Medical

Advisory Committee had suspended Dr Reeves' privileges at The Hills Private Hospital indefinitely, to be reviewed in September 1996. The letter noted that:

This decision was made in the knowledge of Dr Reeves' repeated transgressions at this hospital, and also in the knowledge that similar behaviour had occurred at Hornsby Ku-ring-gai Hospital, and at the Sydney Adventist Hospital.

- 2.14 As a result of the letter from The Hills Private Hospital, the Medical Board sought, and obtained, the agreement of the Northern Sydney Area Health Service to refer the material submitted by it in March 1996 to the HCCC for possible inclusion in other investigations being conducted by the HCCC into Dr Reeves' practice. The HCCC had, by that stage, received and was investigating a number of complaints about Dr Reeves. The HCCC received in total 14 complaints about Dr Reeves between 1990 and 1996.³
- 2.15 At this time, the Medical Board also gave consideration to the question whether a review of Dr Reeves under section 66 of the *Medical Practice Act* was warranted. Section 66 requires the Medical Board to take action by either suspending or placing conditions on a practitioner if it is satisfied that such action is necessary to protect the public. Two delegates of the Medical Board considered material received from the Hills Private Hospital and Hornsby Ku-ring-gai Hospital and expressed the opinion that the evidence may lead to proceedings under the *Medical Practice Act* but that it was not sufficient to justify a Section 66 inquiry. They resolved to refer the matter to the HCCC for investigation.
- 2.16 After the HCCC conducted its investigation into complaints received about Dr Reeves, it referred certain matters to the Medical Board in the form of a complaint, together with an investigation brief and a recommendation that the complaint be referred to the Professional Standards Committee. On 18 September 1996, the Conduct Committee of the Medical Board approved the complaint and concurred with the view that the matters be referred to a Professional Standards Committee. In March 1997, the HCCC forwarded to the Medical Board another investigation brief and an amended complaint containing further matters involving Dr Reeves' care of patients at The Hills Private Hospital and Hornsby Ku-ring-gai Hospital. Further complaints were made to the HCCC during this time, resulting in a total of 9 complaints being referred to a Professional Standards Committee.

Referral to a Professional Standards Committee

Professional Standards Committees

- 2.17 It is appropriate to make some comments about Professional Standards Committees.
- 2.18 The task of a Professional Standards Committee is to determine whether or not the subject matter of a complaint referred to it is proved and, if so, to exercise any of the powers available to it under Division 4 of Part 4 of the *Medical Practice Act*. They include (among others) powers to caution or reprimand, to order that the person seek and undergo medical or psychiatric treatment or counselling, and to direct that such conditions, relating to the person's practising medicine, as it considers appropriate be imposed on the person's registration.⁴ A Professional Standards Committee does not have the power to suspend a practitioner or to remove a practitioner's name from the Register.

- 2.19 The Medical Board appoints the members of a Professional Standards Committee. A Professional Standards Committee is, however, independent of the Medical Board. It is required to consist of 2 medical practitioners and 1 lay, or non-medical, member. Recent amendments to the *Medical Practice Act*, which are yet to commence operation, provide that a legally qualified person must be included in every committee as chairperson.⁵
- 2.20 A Professional Standards Committee generally takes an investigative approach rather than a strict adversarial format. Its hearings are conducted in private, unlike the hearings of the Medical Tribunal which are open to the public. The recent amendments to the *Medical Practice Act*, which are yet to commence operation, alter this position so that Professional Standards Committee hearings will take place in public (except where the Committee otherwise directs).⁶
- 2.21 I do not pause to examine the merits of the decision to refer the complaints about Dr Reeves to the Professional Standards Committee rather than to the Medical Tribunal. Both the Medical Board and the HCCC were under a duty to refer the complaint to the Medical Tribunal if at any time either formed the opinion that it may, if substantiated, provide grounds for the suspension or deregistration of Dr Reeves.⁷
- 2.22 I note that the Professional Standards Committee was required immediately to terminate the hearing and refer the matter to the Medical Tribunal for a complete re-hearing if it formed the opinion that the matter was one which could warrant suspension or deregistration.⁸

The Professional Standards Committee concerning Dr Reeves

- 2.23 The complaints before the Professional Standards Committee concerned Dr Reeves' management of 9 obstetric patients at Hornsby Ku-ring-gai Hospital, The Hills Private Hospital and the Sydney Adventist Hospital where he held appointments as a visiting practitioner. The nature of the complaints ranged from his abrupt, aggressive manner, and communication generally, to the poor quality of his note-taking, his failure to provide adequate anaesthesia during procedures and his management of labour and its aftermath.
- 2.24 The complainant was the HCCC. It alleged that Dr Reeves was guilty of unsatisfactory professional conduct within the meaning of section 36 of the *Medical Practice Act* in that he demonstrated a lack of adequate knowledge, skill, judgment or care in the practice of medicine.
- 2.25 The HCCC recommended to the Professional Standards Committee that Dr Reeves be reprimanded and that he be prohibited from the conduct of all obstetric work and all gynaecological surgery or invasive procedures and that he be directed to participate in relevant educational programs as approved by the Medical Board.
- 2.26 The Professional Standards Committee found a large number of complaints proved. It held that Dr Reeves lacked adequate knowledge, skill, judgment and care in the practice of medicine. It stated:

The most serious failings in this respect were those of repeated errors of judgment and adequate care which contributed to the cause of death of [one patient] and seriously endangered the life of [another] by Dr Reeves' wilful failure to respond clinically in an appropriate and timely manner to the concerns expressed repeatedly by other members of the clinical staff.

2.27 It accepted the evidence that Dr Reeves:

demonstrated a long history of conducting himself in a terse, irritable and intimidating manner towards nursing staff which seriously compromised effective communication of clinical incidents which were critical to his patients' good care and welfare.

2.28 The Professional Standards Committee determined that Dr Reeves had been guilty of unsatisfactory professional conduct and suffered from an impairment within the meaning of the *Medical Practice Act*. A person is considered to suffer from an impairment if the person suffers from:⁹

any physical or mental impairment, disability, condition or disorder which detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise medicine. Habitual drunkenness or addiction to a deleterious drug is considered to be a physical or mental disorder.

2.29 Dr Reeves' impairment was found to be:

personality and relationship problems, and depression that detrimentally affects his mental capacity to practise medicine.

2.30 On 11 June 1997, the Professional Standards Committee made orders and imposed conditions as follows:

ORDERS

1. The decision of the Committee is that Dr Reeves is reprimanded for his unsatisfactory professional conduct.
2. In relation to both complaints which are found proven, the Committee orders that Dr Graeme Reeves cease the clinical practice of obstetrics and make immediate arrangements to cease delivering parturients and to transfer their care to other colleagues over the next four months.
3. In the event of an application for review on (sic) the orders or conditions then the Medical Tribunal is the appropriate review body.

The Committee makes the following conditions:

1. That Dr Reeves commences a programme of clinical supervision and monitoring including a review of his gynaecological practice by a fellow of the RACOG nominated by Dr Reeves and who is acceptable to the Board. Dr Reeves should meet with his supervisor on a regular basis but at least at monthly intervals until reviewed by the Board.
2. That the appointed supervisor receive a copy of these orders and conditions and report to the Board of any concerns he or she has in relation to Dr Reeves gynaecological practice.
3. That the expenses of any supervision and review are to be borne by Dr Reeves.
4. That Dr Reeves continue in psychiatric treatment with Dr Stella Dalton or another suitable psychiatrist of Dr Reeves choice, at a frequency determined by the treating psychiatrist.

5. That Dr Reeves continue taking medication as prescribed by the treating psychiatrist.
 6. That Dr Reeves authorised his treating psychiatrist to advise the Board of any deterioration in his condition of termination of treatment.
 7. That Dr Reeves attend a Board nominated psychiatrist at 3 monthly intervals initially until reviewed by the Board.
 8. That Dr Reeves attend for a review interview at the Board in 12 months at which time these conditions may be varied.
- 2.31 On 21 July 1997, the Professional Standard's Committee's handed down a statement of reasons.
- 2.32 The Professional Standards Committee made publication orders requiring a copy of its orders to be made available to Hornsby Ku-ring-gai Hospital, the Hills Private Hospital and Sydney Adventist Hospital. It directed that a copy of its findings in relation to the particulars in regard to each complaint be provided to certain individuals and that a full copy of its decision be sent to the Royal Australian College of Obstetricians and Gynaecologists.

Concerns about compliance with orders and conditions

- 2.33 On 13 June 1997 the Register of Medical Practitioners was amended to show conditional registration with effect from 11 June 1997.
- 2.34 A copy of the orders of the Professional Standards Committee was provided to Dr Reeves on 18 July 1997 together with an amended registration certificate and a letter advising him that compliance with the conditions was his responsibility.
- 2.35 On 22 July 1997, Dr Reeves wrote to Andrew Dix, Registrar of the Medical Board advising him that he had ceased all confinements as of the date of the hearing and was in the process of arranging, as instructed, to transfer his on-going antenatal patients to the care of other obstetricians.
- 2.36 After the proceedings of the Professional Standards Committee, Dr Reeves continued to practise medicine. He held appointments as visiting medical officer at Hornsby Ku-ring-gai Hospital and the Sydney Adventist Hospital.
- 2.37 The Medical Appointments and Credentials Advisory Committee at the Hornsby Ku-ring-gai Hospital resolved, in light of the findings of the Professional Standards Committee, in August 1997 to recommend reappointing him for a temporary period of 12 months, subject to review, with privileges limited to gynaecology and subject to certain conditions. Those conditions included requirements as to supervision and compliance with the conditions imposed by the Professional Standards Committee.
- 2.38 The Medical Board's records show that Dr Reeves tested the limits of the orders and conditions placed on his practice by the Professional Standards Committee from the outset. What follows is a review of some of the significant interactions between the Medical Board and Dr Reeves in the period leading up to his appointment by the former Southern Area Health Service. As this report is not directed to the conduct of the Medical Board during this period, there is no need to review comprehensively all of the material with which the Inquiry was provided.

- 2.39 Soon after the orders were handed down, the Medical Board received inquiries from at least 2 members of the public who had heard reports that Dr Reeves had been deregistered. They raised concerns that Dr Reeves had not mentioned any restrictions on his practice at recent medical appointments with him, after the date of the Professional Standards Committee orders. The Medical Board informed each of those individuals that Dr Reeves was no longer entitled to practise obstetrics and that they should raise this with him as soon as possible with a view to transferring their care.
- 2.40 Dr Reeves argued about the definition of 'the practice of obstetrics'. In a letter to the Medical Board on 19 August 1997, he indicated that he considered himself entitled to assist in caesarean sections. The Medical Board responded to these issues by sending a letter to Dr Reeves on 24 September 1997 advising him in no uncertain terms that he was not to be involved in the care of obstetric patients, either as the primary clinician or in the capacity of an assistant, and that all patients must be informed that he was no longer available to be their obstetrician. On the same day, the Board wrote to the Health Insurance Commission informing it of the order banning Dr Reeves from obstetrics and requesting that it "flag" his database record to ensure that rebates cannot be claimed for obstetric services provided by Dr Reeves".
- 2.41 On 13 November 1997, the Board-appointed supervisor of Dr Reeves' gynaecological practice telephoned the Medical Board and expressed serious concerns about Dr Reeves' compliance with the supervision arrangement. He followed this up with a letter on 18 November 1997 asking to cease being Dr Reeves' supervisor on the basis that "[h]e refuses to accept, and to act on, my concerns". It appears however that following a discussion with Dr Reeves that day, or soon thereafter, the supervising doctor decided to give Dr Reeves another chance.
- 2.42 The Medical Board had a number of concerns during this period about Dr Reeves' compliance with the orders and conditions of the Professional Standards Committee, arising out of the above incidents. It decided in December 1997 to conduct a disciplinary interview with him. The purpose of this interview was to ensure that he understood the requirements of the Professional Standard Committee's orders. The interview record states that:
- The interviewers made it clear to Dr Reeves that he is to comply strictly with the orders of the PSC.
- 2.43 Dr Reeves attended a Board Review interview on 21 July 1998, pursuant to condition 8 of the Professional Standards Committee's determination of 11 June 1997, with the same interviewers as those who conducted the disciplinary interview. The interviewers read the reports of Dr Reeves' clinical supervisor and Board-appointed psychiatrist, noting that they suggested an improvement in his condition, and required Dr Reeves to attend a further review 12 months later.
- 2.44 By letter dated 13 August 1998, Dr Reeves requested a variation to the orders on his practice to enable him to assist at caesarean section operations. The Medical Board responded on 10 September 1998 informing him of a resolution of the Conduct Committee of 18 August 1998 denying him such permission.
- 2.45 During this period, the HCCC was investigating other complaints against Dr Reeves concerning his management of 2 obstetric patients and 1 gynaecological patient in 1995 and 1996. The HCCC obtained expert opinions on Dr Reeves' conduct. In two cases, the experts found no grounds for criticism of Dr Reeves' treatment of the patient. In the third, which concerned obstetric care provided in 1995-96, the expert was mildly to moderately critical of the care provided. In view of the conditions recently imposed on

Dr Reeves' practice, the HCCC, after consultation with the Medical Board, decided that no further action was required.

Inclusion in Impaired Registrants Program

- 2.46 At the Board Review interview held on 23 August 1999 Professor Glover and Dr Amos discussed the Professional Standards Committee orders and conditions with Dr Reeves and reminded him that the orders could only be reviewed by the Medical Tribunal. The interviewers explained to Dr Reeves that in future he would be regarded as being in the 'Impaired Registrants Program', even though the conditions upon his practice had been imposed by the Professional Standards Committee.
- 2.47 It is apparent from the record of this Board Review interview that Dr Reeves was formally included within the Impaired Registrants Program administered by the Medical Board in August 1999. The usual way in which a medical practitioner becomes part of the Impaired Registrants Program is through being assessed and then participating in an Impaired Registrants Panel. Because it is a feature of that program that the practitioner's consent is required for the imposition of any conditions on registration (following an inquiry by the Panel), it appears that the interviewers of Dr Reeves in August 1999 sought to make it abundantly clear to him, on behalf of the Medical Board, that, although he was to be considered part of the Impaired Registrants Program, the conditions on his registration were not voluntarily imposed. Rather, they were imposed by order of the Professional Standards Committee and were unable to be varied except by the Medical Tribunal.
- 2.48 The report also noted that:
- The interviewers explained this to Dr Reeves carefully. He was also advised that the orders on his practice were accepted as being able to be reviewed only by the Medical Tribunal, while the conditions on his registration were able to be reviewed by the Board. Dr Reeves said that he understood and accepted this.
- 2.49 This statement appears to deal with an issue that arose in relation to the third of the orders imposed by the Professional Standards Committee. That order refers to the Medical Tribunal as the only appropriate review body in respect of the orders and conditions of the Professional Standards Committee. Condition 8, however, specifically stated that the Medical Board could vary the conditions. In August 1999, it is apparent that the Medical Board interviewers sought to clarify this ambiguity by stating that the orders could only be varied by the Medical Tribunal whereas the conditions could be reviewed by the Medical Board.
- 2.50 The interviewers gave to Dr Reeves a copy of the Impaired Registrants Program Handbook.

Termination of appointment at Hornsby and impairment review

- 2.51 At his Board Review interview on 17 August 2000, the interviewers discussed with Dr Reeves a number of complaints received about his conduct at Hornsby Ku-ring-gai Hospital. They took the view that many of the issues concerned the employment relationship between Dr Reeves and the Hornsby Ku-ring-gai Hospital and as such were

not the province of the Impaired Registrants Program. The interviewers also discussed with him concerns about a possible breakdown in his arrangements for clinical supervision of his gynaecological practice and stressed the importance of compliance with that condition.

- 2.52 On 18 December 2000, Hornsby Ku-ring-gai Hospital advised the Medical Board that Dr Reeves had been suspended from duty on the basis of his behaviour towards staff, resulting in complaints from registrars and nurses.
- 2.53 In February 2001, Dr Reeves' appointment at Hornsby Ku-ring-gai Hospital formally came to an end. The Hospital had stipulated that Dr Reeves inform the Hospital as to how the conditions attaching to his reappointment, which I noted above at paragraph 2.37, had been met. Despite repeated requests from the Hospital, Dr Reeves failed to provide the requisite information. At the same time, there were complaints from the medical and nursing staff about his unpredictable and unsatisfactory manner with staff and patients. When his conditional appointment with privileges limited to gynaecology expired, he was advised that it would not be renewed owing to the conditions of appointment not being met.
- 2.54 Once his appointment at Hornsby Ku-ring-gai Hospital ceased, Dr Reeves' clinical supervisor advised the Medical Board, in March 2001, that he would no longer take a supervisory role because Dr Reeves was no longer practising gynaecology.
- 2.55 Dr Reeves attended another Board Review interview on 23 August 2001. Dr Reeves was at that stage working in a general practice in Richmond (the Richmond Market Place Medical Centre) as a general practitioner and sometime consultant gynaecologist.
- 2.56 On 18 September 2001, the Medical Board's Health Committee resolved that:
- On the basis of the information received by the Board about Dr Reeves' current employment in general practice, ... Dr Reeves be required to attend an Impaired Registrants Panel.
- 2.57 On 26 September 2001, Evan Rawstron, Coordinator of the Medical Board's Performance and Health Program wrote to Dr Reeves to inform him:
- The Committee resolved that your current conditions of registration are no longer suitable due the change (sic) in the nature of your practice of medicine. To accommodate this the Committee resolved that you be required to attend an Impaired Registrants Panel to review your conditions and make any changes necessary to ensure the protection of the public.
- 2.58 On 30 November 2001, an Impaired Registrants Panel was convened to revise his conditions. The Impaired Registrants Panel made 8 conditions related to health, monitoring and employment. Those conditions were:

Health Related Conditions

1. to attend for treatment by a general practitioner of my choice, currently Dr [], at a frequency to be determined by Dr Reeves and the treating practitioner. To authorise the treating practitioner to inform the Board of failure to attend for treatment, termination of treatment or if there is a significant change in health status.
2. to attend for treatment by a psychiatrist of my choice, currently Dr [], at a frequency to be determined by the treating psychiatrist. To

authorise the treating psychiatrist to inform the Board of failure to attend for treatment, termination of treatment or if there is a significant change in health status.

3. to continue taking any medication prescribed by my treating psychiatrist.

Monitoring Related Conditions

4. to attend for review by Dr [], the Board-nominated psychiatrist, on an annual basis, at the Board's expense.
5. to attend a Review Interview at the Board in twelve (12) months or as otherwise directed by the Board.
6. to authorise the Board to forward copies of the Impaired Registrants Panel report, subsequent Board Review Interview reports and other information relevant to my impairment to the Board-nominated practitioners and my treating practitioners.

Employment Related Conditions

7. to notify the Board prior to changing the nature of place of practice.
8. that the extent of my professional medical duties is to be guided by my health status and the advice of my treating & Board-nominated practitioners.

- 2.59 It should be noted that the conditions imposed in November 2001 no longer included a requirement for "clinical supervision and monitoring including a review of his gynaecological practice by a fellow of the RACOG...". The report of the Impaired Registrants Panel dated 30 November 2001 noted that Dr Reeves' was working in general practice in Richmond and that he also had a gynaecology practice, consisting of non-procedural consultations, which he conducted at both Richmond and in Castle Hill. It stated that the:

issue of clinical supervision was a difficult matter.

And that:

The interviewers were unable to think of an effective way to supervise Dr Reeves in his two parallel practices of general practice and gynaecology in a country area...

- 2.60 The report of the Impaired Registrants Panel dated 30 November 2001 notes that the Chairperson:

refreshed Dr Reeves with details of the Impaired Registrants Inquiry, that it is confidential, and the voluntary nature of conditions agreed to at the conclusion of the interview.

- 2.61 The report also noted that:

He has long term plans of leaving Sydney and working in a group practice in a country area. He has made some tentative arrangements but no actual approach yet.

- 2.62 In accordance with s 191B of the *Medical Practice Act*, which had come into operation on 1 October 2000, the Medical Board notified the Richmond Market Place Medical Centre of the employment-related conditions imposed by the Impaired Registrants Panel. There was no reference in that letter to the previous orders and conditions of the

Professional Standards Committee. Indeed, the letter to the Richmond Market Place Medical Centre stated that Dr Reeves had “voluntarily agreed to a number of conditions being imposed on his registration. In accordance with statutory confidentiality requirements and the Board’s policy on the release of health related conditions please find below the conditions on Dr Reeves’ registration relevant to his employment”.

- 2.63 That letter in particular its reference to conditions relevant to employment would, in my view, have misled the recipient as to the extent of the restrictions on Dr Reeves’ right to practise medicine in New South Wales, in particular the prohibition on his practice in obstetrics.
- 2.64 On 27 December 2001, the Medical Board sent Dr Reeves a letter confirming the conditions of the Impaired Registrants Panel. The letter does not refer to Orders 1-3 made by the Professional Standards Committee in 1997. It is this letter that Dr Reeves presented to the Southern Area Health Service when he applied for the position as obstetrician gynaecologist, together with a statement in his resume that he had “conditional registration”.

Performance Assessment Program

- 2.65 Three further complaints were received in 2000 and 2001 by the HCCC in relation to Dr Reeves’ practice in 2000 and 2001.
- 2.66 As a result, on 19 February 2002, the Medical Board’s Conduct Committee resolved to refer Dr Reeves to the Performance Committee for assessment of his professional performance. The Medical Board’s Performance Committee resolved on 26 February 2002 that Dr Reeves’ professional performance be assessed by a Performance Review Panel.
- 2.67 The Performance Assessment Program is provided for under Part 5A of the *Medical Practice Act*. It allows the Medical Board to have the professional performance of a registered medical practitioner assessed, at the doctor’s practice, if any matter comes to its attention that indicates that the doctor’s professional performance, or any aspect of his or her professional performance, may be unsatisfactory. This is not limited to matters that are the subject of a complaint or notification to the Medical Board. The term ‘unsatisfactory’ is defined in section 86B of the *Medical Practice Act* to refer to performance that is below the standard reasonably expected of a practitioner of an equivalent level of training or experience.
- 2.68 The assessors write a report which is then sent to the Medical Board. The Medical Board may take any of the actions provided under section 86J, including requiring a Performance Review Panel to conduct a review of the practitioner’s professional performance. At the completion of a performance review, a Performance Review Panel may make such recommendations to the Medical Board in respect of the practitioner as the Panel considers appropriate, including directing that conditions be imposed on the person’s registration and ordering that the practitioner complete such educational courses as are specified by the Panel.¹⁰
- 2.69 The program is designed to be remedial, rather than disciplinary, and has much to commend it.
- 2.70 On 18 March 2002, the Medical Board wrote to Dr Reeves at his practice address (which he had nominated as Castle Hill) to inform him that its Performance Committee had resolved to undertake an assessment of his professional performance and asking

him to return a Pre-Visit Questionnaire. By that stage, Dr Reeves had moved his residence to the far South Coast of New South Wales.

- 2.71 Dr Reeves did not inform the Medical Board of his change in place of practice until 12 April 2002 when he telephoned the Medical Board to advise that he had quit general practice and moved to Pambula where he was recommencing gynaecology practice. He informed the Medical Board that he wished to be excluded from the Performance Assessment Program. Dr Reeves confirmed this information in a letter to the Medical Board dated 14 April 2002 and stated that he was not in a position to fill out the Pre-Visit Questionnaire as he had commenced a totally new medical practice as gynaecologist.

³ HCCC Press release dated 5 March 2008.

⁴ Section 61, *Medical Practice Act*.

⁵ Schedule 1 [26], *Medical Practice Amendment Act 2008*.

⁶ Schedule 1 [28], *Medical Practice Amendment Act 2008*.

⁷ Section 52, *Medical Practice Act*.

⁸ Section 179(1), *Medical Practice Act*.

⁹ Dictionary, clause 3, *Medical Practice Act*.

¹⁰ Section 86N, *Medical Practice Act*.

3 Appointment of Dr Reeves by the Southern Area Health Service

Background to appointment	20
The former Southern Area Health Service	20
Obstetric Services in the Bega Valley	20
Advertisement and initial meeting with Dr Mortimer	21
Interview with Dr Arthurson	22
Letter from Dr Mortimer	23
Application for appointment.....	23
The appointment processes	28
Governance of the Southern Area Health Service	28
Credentialing, clinical privileging and appointment processes	29
The Credentialing of Dr Reeves	30
The Appointment of Dr Reeves	31
Board approval of the appointment	34
Referee check	35
Temporary appointment as locum.....	36
Offer of Fee-For-Services Contract.....	38
Dr Reeves' notification of appointment to the Medical Board.....	40

Background to appointment

- 3.1 At the time of his move to the far South Coast of New South Wales, in either late 2001 or early 2002, Dr Reeves was practising medicine under the following arrangements:
- (a) The orders 1-3 of the Professional Standards Committee made on 13 June 1997, in particular the order that he cease the clinical practice of obstetrics;
 - (b) Eight conditions imposed by an Impaired Registrants Panel of the Medical Board on 30 November 2001, relating to health, monitoring and employment. These conditions replaced those imposed by the Professional Standards Committee on 13 June 1997;
 - (c) He was awaiting assessment by a Performance Review Panel, as resolved by the Medical Board on 26 February 2002. The assessment took place on 8 December 2003.¹¹

- 3.2 In evidence given to the Inquiry, Dr Reeves said that before he moved to the Bega Valley, he had already visited Lithgow, Tamworth and Armidale in search of a medical appointment. He had attended informal interviews at those locations but had declined to make applications after being informed that the relevant appointments required the provision of obstetric services.¹² Dr Reeves then went to Bateman's Bay, where he says that it was suggested to him, by a local general practitioner, that he "go south" in search of employment.¹³

The former Southern Area Health Service

- 3.3 In 2002, the far south coast of New South Wales was part of the Southern Area Health Service. That Area Health Service no longer exists. On 1 January 2005 it merged with the Greater Murray Area Health Service to form the Greater Southern Area Health Service. When it existed, the Southern Area Health Service covered an area of 52,214 square kilometres in South Eastern NSW surrounding the ACT. It extended from Crookwell in the north to the Victorian border in the south, from Young and the Snowy River in the west and from Batemans Bay along the coastal strip to Victoria. It shared borders with ACT Health, Greater Murray Area Health Service to the west, South Western Sydney Area Health Service to the north and Illawarra Area Health Service to the northeast.¹⁴
- 3.4 At the time of Dr Reeves' appointment, the Southern Area Health Service was divided into 6 geographic areas. One of those areas consisted of the Bega Valley which was served by Bega District Hospital and Pambula District Hospital, together with the community health services.¹⁵
- 3.5 The Chief Executive Officer of the Southern Area Health Service was Dr Denise Robinson who was based in Queanbeyan.¹⁶ The Bega Valley Health Service was under the direction of a General Manager, Ms Christine Dwyer. The Area Director of Medical Services, Dr Robert Arthurson, was based in Goulburn. The Area Deputy Director of Medical Services was Dr Jon Mortimer who was based in the Bega Valley and who was the first point of contact for local health service managers and visiting medical officers in the Bega Valley hospitals.¹⁷

Obstetric Services in the Bega Valley

- 3.6 Obstetric services in the Bega Valley hospitals were provided by GP obstetricians supported by a specialist obstetrician as required.¹⁸ Dr Robinson gave evidence that the GP obstetricians tended to look after patients whose pregnancies did not present

complications and whose labours were expected to be low risk.¹⁹ Specialist obstetric back-up was required for the higher risk pregnancies and emergency caesarean sections. Dr Robinson highlighted in her evidence that the need for specialist care can occur suddenly and that the function of the back-up specialist obstetrician was to perform caesarean sections, or to provide other appropriate obstetric care, in the event of an emergency in the course of a delivery or confinement.²⁰ The primary service for which obstetric back-up was required was caesarean section.²¹ Dr Mortimer and Dr Arthurson each gave evidence to similar effect.²²

- 3.7 Prior to Dr Reeves' appointment, specialist obstetric back-up was provided by a specialist obstetrician gynaecologist, Dr David Saxton. Dr Saxton resigned shortly after Dr Robinson took up her position as CEO in August 2001. Dr Robinson gave evidence that following the departure of Dr Saxton, there was a need for specialist obstetric back-up services in the Bega Valley hospitals.²³ With the departure of Dr Saxton, Dr Mortimer made arrangements for cover of the hospitals by locum obstetrician gynaecologists and also instituted arrangements for support from The Canberra Hospital.²⁴ The hospitals were, however, without specialist obstetric back-up for several months leading up to Dr Reeves' appointment. It is clear that there was a need to fill the permanent position vacated by Dr Saxton to ensure stability of cover and predictability of service.²⁵

Advertisement and initial meeting with Dr Mortimer

- 3.8 On 17 September 2001, the Southern Area Health Service advertised for expressions of interest for the position of specialist obstetrician and gynaecologist at the Bega and Pambula District Hospitals. The advertisement sought a registered medical practitioner who could provide:

specialist obstetric services in support of GP
obstetricians and local gynaecological consulting.

- 3.9 Dr Reeves gave evidence that he did not see any advertisements about the position.²⁶ Rather, sometime in either December 2001 or early January 2002 he made an unannounced visit to the Bega District Hospital to inquire as to whether there were any vacancies. On that occasion, Dr Reeves spoke to Dr Mortimer and Kym Durance, Bega Health Service Manager. Dr Mortimer informed him that there was a vacancy for a position as a VMO obstetrician gynaecologist.²⁷ Dr Reeves told Dr Mortimer that he felt that it would be good for his medical condition if he were to reduce the pressures of working in the city.²⁸ According to Dr Reeves, he stated to Dr Mortimer that the Medical Board had placed conditions on his medical registration.²⁹ He also gave evidence that he told Dr Mortimer that he was not going to do obstetrics.³⁰
- 3.10 Dr Reeves acknowledged in his evidence that, during his meeting with Dr Mortimer and Mr Durance, he did not mention that he was not entitled to practise obstetrics.³¹ Dr Reeves sought to explain this omission by saying that the job position did not require the provision of obstetric services. The need, he said, was in the area of gynaecology.

It was presented to me that they had adequate cover for obstetrics. They relieved themselves. They had two surgeons who were trained to provide emergency caesarean sections. They had two GPs trained to provide emergency caesarean section facilities, and they were self-relieving in that regard. What Dr Mortimer, Mr Durance and Dr Arthurson pointed out was that they had no gynaecological service and that's what he wanted.³²

And further, in answer to the following question:

... Dr Mortimer says that he did not tell you that the position was for gynaecological patients only. That's a correct statement, is it not?

A. The correct statement was that they had obstetrics covered, and I assumed that it meant that he was looking for a gynaecologist. He was absolutely adamant in describing the services that they provided through the GP obstetricians and the surgeons who were qualified to do caesars and that there was no need for me to provide routine obstetric services.³³

3.11 Upon questioning, however, Dr Reeves agreed that at this initial meeting he indicated that he could provide specialist back-up to the local GP obstetricians, although he said that this was limited to an emergency situation.³⁴ I will return to the issue of emergency obstetric services below.

3.12 After meeting Dr Reeves, Dr Mortimer sent an email to both Dr Arthurson and Dr Robinson on 11 January 2002. One of the statements made in the email is as follows:

His interest is in gynaecology mainly, but will provide emergency back-up to GPs for unexpected problems with good risk obstetric patients. His preference is that planned deliveries remain confined to GP obstetrics level. He will not seek to have his own patients.

3.13 It is plain from the evidence, in particular the email sent by Dr Mortimer shortly after his meeting with Dr Reeves, that Dr Mortimer did not say to Dr Reeves that the position was intended to meet a need only in the area of gynaecology. I reject Dr Reeves' evidence that, in effect, he was led to believe that specialist obstetric services were not required. I accept, however, that Dr Reeves' indicated that his main interest was in the area of gynaecology.

Interview with Dr Arthurson

3.14 On 16 January 2002, Dr Reeves attended an interview in Goulburn with Dr Arthurson. Dr Arthurson and Dr Reeves had attended university together but had not seen or heard from each other in the intervening years since graduation.³⁵ Dr Arthurson stated that he knew nothing about Dr Reeves' appearance before the Professional Standards Committee.

3.15 During the interview, Dr Reeves told Dr Arthurson that he had a major depressive illness and that conditions had been placed on his medical registration regarding follow-up and periodical assessment.³⁶ Dr Reeves explained to Dr Arthurson that he had undergone impairment reviews at the Medical Board and that his colleagues had been very supportive. They had indicated that they valued him highly.³⁷ He said to Dr Arthurson that he was interested in a change in lifestyle.³⁸ Dr Arthurson's overall impression was that Dr Reeves was well controlled with his treatment.

3.16 Dr Reeves again failed to mention that he could not provide obstetric services.³⁹ In his evidence, he said that he told Dr Arthurson that he would not provide obstetric services and that he would apply only for privileges in gynaecology. According to Dr Reeves, Dr Arthurson responded that his application would be considered in that light. In fact, Dr Reeves claims that Dr Arthurson undertook, at the end of the interview, to treat any formal application from Dr Reeves as an application for a position of gynaecologist only.

Dr Reeves said that he made his application after the discussion with Dr Arthurson on that basis.⁴⁰

- 3.17 Dr Arthurson denied giving such an undertaking.⁴¹ According to Dr Arthurson, he told Dr Reeves that the area needed a specialist obstetrician to provide non-elective, consultative support to the GP obstetricians and to perform caesarean section operations if required.⁴² Dr Reeves said during the interview that he would not take referrals or run an obstetric practice.⁴³ Dr Arthurson acknowledged that Dr Reeves' written application, submitted a month later, referred only to gynaecology rights. He said, however, that the discussion on 16 January 2002 very clearly identified the need for the appointee to provide non-elective obstetric cover for the local GP obstetricians.⁴⁴ Dr Reeves did not recall whether he indicated to Dr Arthurson his availability to provide such back-up in emergencies.⁴⁵
- 3.18 At the end of the interview, Dr Arthurson gave to Dr Reeves a copy of the application form for appointment as a visiting practitioner.⁴⁶
- 3.19 Dr Arthurson gave evidence that he would not have supported the appointment of Dr Reeves if he had indicated a willingness only to carry out gynaecological work.⁴⁷ The general view of the senior executive of the Area Health Service was, he said, that in order to attract an obstetrician to Bega and Pambula on a long term basis, it was necessary to provide a viable referral practice in gynaecology. It would not have been possible to do so were there to be another competitor working only in gynaecology.⁴⁸ For this reason, Dr Arthurson believes that Dr Reeves would not have been appointed if he had applied for a position limited to gynaecology practice, except perhaps on a short term basis.
- 3.20 I accept Dr Arthurson's evidence, in preference to that of Dr Reeves in particular, that he did not undertake to treat Dr Reeves' application as an application for a position as gynaecologist.

Letter from Dr Mortimer

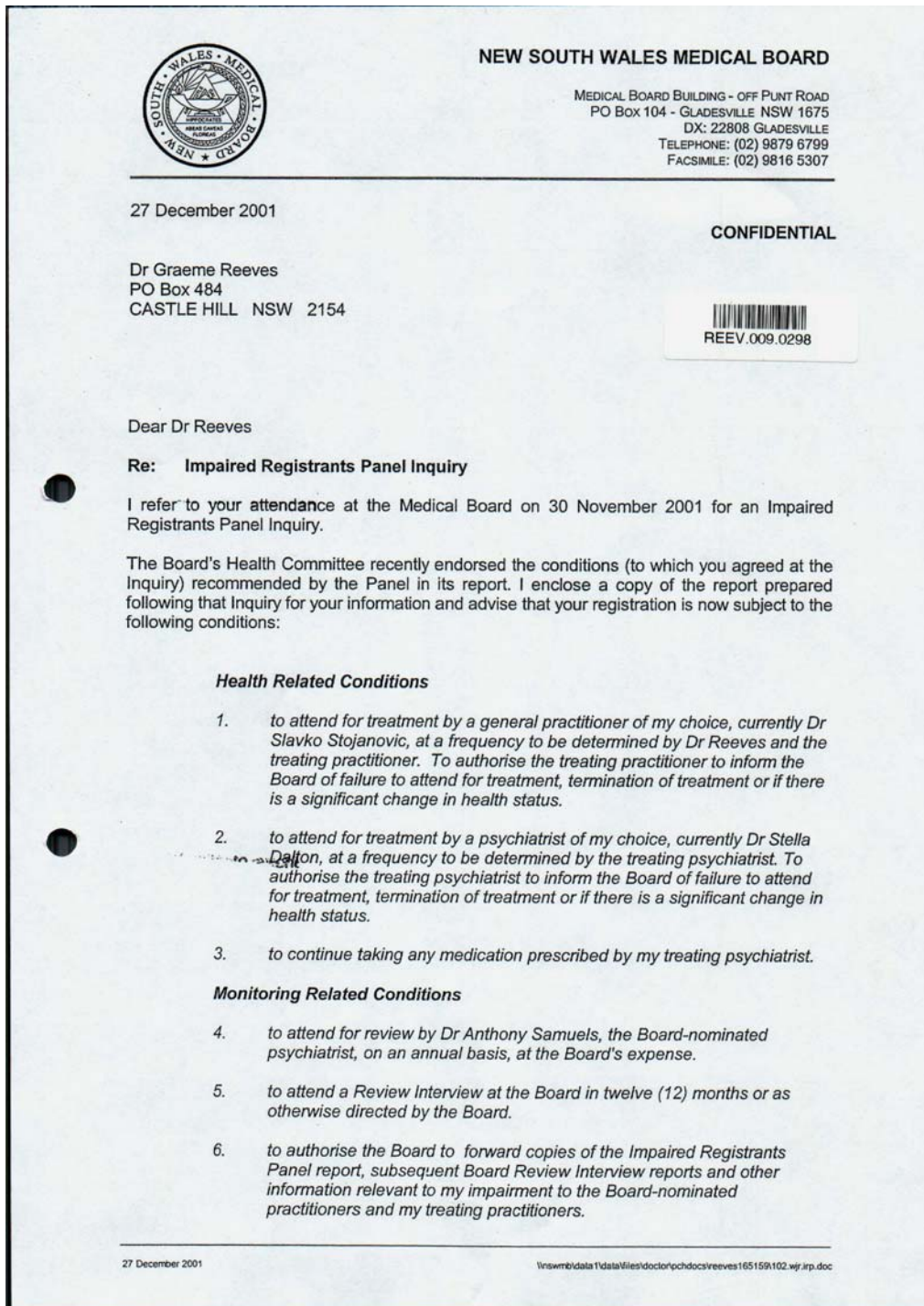
- 3.21 On 19 January 2002, Dr Mortimer wrote to Dr Reeves thanking him for the visit during his recent visit to Bega. Dr Mortimer's letter provided general information and advised Dr Reeves that the available position called for:

support for general practitioner obstetricians in the management of obstetric emergencies.

Application for appointment

- 3.22 Having attended these two informal meetings, and having received the letter of 19 January 2002, Dr Reeves submitted a formal application to Dr Arthurson under a letter dated 10 February 2002. The application included the following documents:
- his curriculum vitae, in which he nominated 3 referees;
 - a Prohibited Employment Declaration form;
 - a form by which he consented to the carrying out of a criminal record check;
 - a copy of a letter from the Medical Board of New South Wales dated 27 December 2001, signed by Evan Rawstron relating to the Impaired Registrants Program.

- 3.23 At some stage shortly thereafter, Dr Reeves also submitted to Dr Arthurson a letter from the Medical Indemnity Protection Society and part of an NRMA Insurance cover note relating to his professional indemnity insurance, as well as Part 1 of the application form for appointment as a visiting practitioner.
- 3.24 On each of the cover letter dated 10 February 2002, the Prohibited Employment Declaration form, the criminal record check form and the application form, Dr Reeves described the position applied for as "gynaecologist".
- 3.25 Two of the documents submitted by Dr Reeves to Dr Arthurson are of particular note. The letter from the Medical Board dated 27 December 2001 is of central importance and I will return to its significance below. The copy letter is here reproduced:⁴⁹



NEW SOUTH WALES MEDICAL BOARD



Employment Related Conditions

7. *to notify the Board prior to changing the nature or place of practice.*
8. *that the extent of my professional medical duties is to be guided by my health status and the advice of my treating & Board-nominated practitioners.*

Information concerning compliance with your conditions of registration can be found in the Impaired Registrants Program Participant's Handbook, a copy of which you received at the conclusion of the Inquiry. In the event that you are unable to comply with one your conditions or require clarification of the action required to do so, please contact the Board immediately.

As discussed at the IRP, the Board is required under section 191B of the Medical Practice Act to give notice of any order made under the Act, or the imposition of conditions on the registration of a practitioner, to the following parties:

- (a) The employer (if any) of the practitioner concerned.
- (b) The Chief Executive Officer (however described) of any public health organisation in respect of which the practitioner concerned is a visiting practitioner or is other wise accredited.
- (c) The Chief Executive Officer (however described) of any private hospital or day procedure centre in respect of which the practitioner concerned is accredited.
- (d) The Chief Executive Officer (however described) of any nursing home (within the meaning of the *Nursing Homes Act 1988*) in respect of which the practitioner concerned is accredited.

Accordingly, I also enclose for your information a copy of correspondence sent to the relevant parties.

I can be contacted on telephone (02) 9879 6799 should you wish to clarify any aspect of this matter.

Yours sincerely

Evan Rawstron
Coordinator – Performance & Health

CC: Dr Samuels
Dr Dalton
Dr Stojanovic

- 3.26 The other significant document submitted by Dr Reeves is page 3 of his curriculum vitae. That page contained the following statements:

Medical Registration - MPO 65159

In 1997 I was reviewed by the Medical Board after referral by a colleague and on review was found to be impaired by a severe endogenous depression.

My Registration was made conditional and I have been in the Impaired Physicians Program undergoing regular reviews by the Board since that time. My last review by the Board was in August 2001 and at which time Dr B. Amos indicated to me that he felt I would be out of the Program in 2002.

In December 2001 a sub committee of the Board conducted an Impairment Hearing Review and have indicated that my conditions remain largely unchanged, summarised:

1. I am to remain under the care of the Psychiatrist of my choice (Dr M S Dalton) and continue treatment that she advises.
2. To be reviewed annually by the Board's nominated Psychiatrist (Dr A Samuels).
3. To attend the Board for review annually (due August 2003).
4. To maintain contact with a General Practitioner.
5. To notify the Board of any change to my Practice.

I have discussed this Application with Dr Dalton and a representative of the Board and both agree that I am an appropriate Applicant at this time.

- 3.27 Page 1 of Dr Reeves' curriculum vitae is also important. On that page, Dr Reeves listed his current and previous appointments. Listed under the heading "Current Appointment" were the words:

Visiting Medical Officer - Hornsby and Ku-ring-gai Hospital

Visiting Medical Officer - Sydney Adventist Hospital

- 3.28 These statements were misleading. Hornsby Ku-ring-gai Hospital suspended Dr Reeves from duty on 18 December 2000 and his appointment as VMO at that hospital formally came to an end in February 2001. His position as visiting medical officer at Sydney Adventist Hospital came to an end in or before 2000.⁵⁰ In his evidence, Dr Reeves admitted that the statements were false.⁵¹

- 3.29 The final page of the Application form states that the applicant authorises:

the Board and/or Medical Appointments Advisory Committee and/or the Credentials Committee to seek such information as may be required about my past experience and performance as a medical or dental practitioner.

- 3.30 What emerges clearly from the written documentation submitted by Dr Reeves in support of his application for appointment as a visiting medical officer is that there is no reference to the order of the Professional Standards Committee that he cease the clinical practice of obstetrics or to the complaints that gave rise to that order. Nor is there reference to the order reprimanding him for unsatisfactory professional conduct.

Nor is there reference to the fact that his appointments at Hornsby Ku-ring-gai and the Sydney Adventist Hospitals had ceased.

- 3.31 Dr Reeves' initial response when questioned about his failure to refer to the order that he cease to practise obstetrics in his application was that he did not think it was relevant given that he was applying for a job as gynaecologist.⁵² He also testified that by 2002 he had undergone 10 years of treatment by a psychiatrist, that his condition had improved and that at the time of his appointment, he had no intention of engaging in obstetric practice again. He suggested that the behaviour which gave rise to the orders in 1997 had been adequately treated, although he denied holding a belief that this permitted him to absolve himself from complying with the orders.⁵³
- 3.32 Later in answer to questions, however, Dr Reeves stated that he had wished to make a "whole new change" when he left Sydney for the south coast and that he did not wish to jeopardise this plan by revealing the restrictions on his right to practice obstetrics to his prospective employer.⁵⁴ He had appreciated at the time that if the Area Health Service were to learn about the true nature of the restrictions on his right to practise medicine, his application might not be successful.⁵⁵ This was so even though he continued to stress in his evidence that he applied for a position as gynaecologist only, albeit having indicated to at least Dr Mortimer that he could provide obstetric cover in emergency situations.⁵⁶
- 3.33 Ultimately, Dr Reeves accepted the proposition that he intentionally concealed in his job application both the order of the Professional Standards Committee banning him from the practice of obstetrics and his past performance in the treatment of obstetric patients.⁵⁷ He believed, however, that by informing the Area Health Service that he had conditional medical registration, it would check his status with the Medical Board.⁵⁸ I return to the issue of verifying registration with the Medical Board in Chapter 4 below.
- 3.34 It is clear that Dr Reeves appreciated the relevance of disclosing the order to the Southern Area Health Service and that he deliberately chose not to do so. He did this so as not to jeopardise his chances of gaining employment. The principal way that Dr Reeves achieved his object was by submitting the letter from the Medical Board dated 27 December 2001 shown above.
- 3.35 Dr Reeves' evidence was that the letter was the only document from the Medical Board in his possession.⁵⁹ Under cross-examination, however, Dr Reeves admitted that when he provided the copy of the letter from the Medical Board dated 27 December 2001 to the Southern Area Health Service, he did so in the knowledge that it was not a full account of what had happened before the Professional Standards Committee in 1997 and that it did not include any reference to the order banning him from practising obstetrics.⁶⁰ He admitted that he did this with the intention of concealing the order from the Southern Area Health Service.⁶¹ It is clear that Dr Reeves intended that the letter would be taken as a complete and comprehensive statement of the restrictions on his ability to practise medicine and that he used it as a device to conceal the order, and thereby maximise his prospects of obtaining the appointment as a visiting medical officer.

The appointment processes

Governance of the Southern Area Health Service

3.36 In 2002, the affairs of the Southern Area Health Service were controlled by the area health board. The board was subject to the control and direction of the Minister, except in relation to the contents of any recommendation or report made by the board to the Minister.⁶²

3.37 Board membership consisted of a Chair, Deputy Chair, 5 other non-executive members, a staff elected member and the Chief Executive Officer, as an 'ex-officio' member. At the time of Dr Reeves' appointment, the membership of the board of the Southern Area Health Service was as follows:⁶³

Chairman	Mr Gratton Wilson
Director	Ms Karen Kemp
Director	Ms Elizabeth Akmentins
Director	Mr Michael Veitch (Deputy Chair)
Director	Mr Garry Arkin (staff elected member)
Director	Mr Tom Slockee
Director	Dr Bryan Young
Director	Mr John Coleman
CEO	Dr Denise Robinson

3.38 With the exception of the CEO, the Board members were not engaged full-time in the activities of the Area Health Service. They met monthly and on an ad hoc basis as the affairs of the Area Health Service required. Some of the members were medical practitioners or people working in the health sector. Most were not. Their qualifications and skills varied. There was no full time independent secretariat for the Board. Support was provided by the office of the CEO.

3.39 At that time, the chief executive officer was appointed by the Governor and was responsible for the management of the affairs of the area health service, subject to and in accordance with any directions of the area health board.⁶⁴ The chief executive officer was taken, while holding that office, to be employed by the area health service, pursuant to section 28(4) of the *Health Services Act*.

3.40 As part of its responsibility for corporate governance, the board had a committee structure in accordance with the applicable by-laws. In 2002, the Southern Area Health Service by-laws required the Board to establish a Medical Appointments Advisory Committee to advise it, and where appropriate to make recommendations to the Board, concerning any matter relating to the appointment or proposed appointment of visiting practitioners, staff specialists or career medical officers.⁶⁵ As a committee of the Board, the Medical and Dental Appointments Advisory Committee was not under the direct control of the Chief Executive Officer, who was not responsible for the decisions which it made.

3.41 The Southern Area Health Service by-laws also required the area to have a Credentials Committee. A subcommittee of the appointments committee,⁶⁶ the Credentials Committee had the role of advising that committee on all matters concerning the clinical privileges of visiting practitioners, or persons proposed for appointment as visiting practitioners, staff specialists or career medical officers.

- 3.42 The governance arrangements in respect of area health services in 2002 therefore differed significantly from the current governance arrangements. Currently, the affairs of an area health service are managed and controlled by the chief executive of the service, subject to the control and direction of the Director-General of Health.⁶⁷

Credentialing, clinical privileging and appointment processes

- 3.43 The processes of credentialing, clinical privileging and appointing a medical practitioner are intended to permit an area health service to select the most suitable candidate from amongst competing applicants and to set appropriate terms and conditions of appointment. These processes are essentially filtering processes which, if properly applied, should have allowed the Southern Area Health Service to detect the true extent of the restrictions on Dr Reeves' right to practice medicine in New South Wales. For that reason, it is important to examine in detail the processes adopted by the Southern Area Health Service in the case of Dr Reeves' appointment.
- 3.44 The definitions section of the *National Guidelines for Credentials and Clinical Privileges* of the Australian Commission on Safety and Quality in Health Care⁶⁸ contains a useful description of the credentialing, clinical privileging and appointment processes:

Appointment is the formal process of selecting a preferred candidate from among competing applicants and setting the terms and conditions of appointment, consistent with relevant industrial awards or other determinants. Consideration should be given at the time of appointment to the assessment of credentials and delineation of clinical privileges for the successful applicant in line with needs and resources of the facility as determined by the levels of service provided by the facility. The process is required to comply with guidelines designed to ensure fairness and equity.

Competence is the application of knowledge and skills in interpersonal relations, decision making and performance consistent with the professional's practice role.

Credentials represent the formal qualifications, training, experience and clinical competence of the health care professional. They are evidenced by documentation such as university degrees, fellowships/memberships of professional colleges or associations, registration by professional bodies, certificates of service, certificates of completion of specific courses, periods of verifiable formal instruction or supervised training, validated competence, information contained in confidential professional referee reports and professional indemnity history and status.

Credentialling is the formal process of assessing a professional health care professional's credentials in relation to that professional role within a specific facility.

Clinical privileges result from a process in which the Governing Body or its delegate grants a health care professional the authority to provide health care services within defined limits in a health care facility. They represent the range and scope of clinical responsibility that a professional may exercise in the facility. Clinical privileges are specific to the individual, usually in a single health care facility (or group of facilities such as a rural District/Region or a Multi-Purpose Service) and relate to the resources,

equipment and staff available. Recommendations are made to the Governing Body following the determination of what a health care professional can or cannot do in a facility.

Governing Body refers to the body or its delegate who has ultimate responsibility for the health care facility.

- 3.45 The delineation of clinical privileges occurs as part of the appointment process. The term “clinical privileges” is also defined in section 105(2) of the *Health Services Act 1997* as:⁶⁹

the kind of clinical work (subject to any restrictions) that the public health organisation determines the visiting practitioner is to be allowed to perform at any of its hospitals.

The Credentialing of Dr Reeves

- 3.46 On 26 March 2002, the Credentials Committee of the Southern Area Health Service convened by teleconference and considered applications for the position of specialist obstetrician and gynaecologist at Bega and Pambula District Hospitals. The chair of that meeting was normally the Director of Medical Services, who was Dr Arthurson, with Dr Mortimer as secretary.⁷⁰ Dr Mortimer chaired the meeting in the absence of Dr Arthurson. The other members of the Credentials Committee were Dr Mark Oakley, Dr Frank Simonson, Dr John Berick, and Dr Steve Ellwood.
- 3.47 Dr Mortimer gave evidence about the task of a Credentials Committee. He stated that in 2002 the evidence of a specialist’s qualifications was obtained from the applicant’s curriculum vitae. The committee did not interview the applicant. For local applicants, the Area Health Service did not check the applicants’ qualifications with the relevant college or university.⁷¹ According to Dr Mortimer this is still the case, although a copy of the certificate showing specialist qualifications is now required.
- 3.48 Dr Mortimer stated that in the case of Dr Reeves, he read Dr Reeves’ curriculum vitae, application form and supporting documentation. He does not recall whether or not the other members of the Credentials Committee were provided with the same documentation. However he considered this to be unlikely, given in particular that, as recorded in the minutes of the meeting, Dr Mortimer explained to the other members the conditions on Dr Reeves’ registration, as he then understood them.⁷² Dr Arthurson gave evidence that generally only the convenor of the meeting, or acting convenor, as the case may be, received the documentation.⁷³ The Credentials Committee did not consider referee checks.
- 3.49 In 2002, an applicant’s registration was always checked by requiring the applicant to provide proof of registration.⁷⁴ Both Dr Mortimer and Dr Arthurson gave evidence that proof of registration would normally be provided by the applicant providing a photocopy of a registration card.⁷⁵ There was no independent verification. In the case of Dr Reeves, no photocopy of his registration card was provided. Rather, proof of his registration was shown in the letter from the Medical Board dated 27 December 2001 listing the conditions by which his practise was restricted.
- 3.50 Dr Mortimer testified that his overall impression, at the time, was that Dr Reeves had suffered from a mental illness that had affected his capacity to practice obstetrics in the past, that he was in the Impaired Registrants Program administered by the Medical Board and was now performing well.⁷⁶

- 3.51 Although the minutes of the Credentials Committee are short, they note that Dr Mortimer had explained to each of the applicants the expectations of the position and that:

While there was no requirement to conduct a private obstetric practice, specialist back-up for GP obstetricians was required.

- 3.52 Dr Simonson was a member of the Credentials Committee. He told the Inquiry that he does not recall Dr Mortimer explaining during the meeting that specialist back-up for GP obstetricians was a requirement of the position.⁷⁷ Nevertheless, when he attended the meeting, Dr Simonson understood that the provision of an emergency obstetric back-up service was a requirement, in particular in cases of caesarean section.⁷⁸ The way in which the holder of the position would undertake the provision of obstetric services was to participate in a roster compiled each month and to be available to provide obstetric services when and if called.⁷⁹

- 3.53 Dr Simonson testified that he was not given a copy of the letter from the Medical Board dated 27 December 2001 about Dr Reeves' conditional registration.⁸⁰

- 3.54 The minutes of the Credentials Committee show that concerns about the conditional registration of another applicant gave rise to a recommendation that further information be sought from the Medical Board. Dr Mortimer noted in his evidence that the Credentials Committee is entitled to seek whatever information it requires to make a decision⁸¹ and that the request for further information about the other applicant's registration status was an example of this. It is clear that this follow-up was not the result of any systemic check being made on the particular applicant's ability to deliver obstetric services but rather the ad hoc result of a member of the committee having prior knowledge about that applicant and raising the issue.⁸²

- 3.55 The Credentials Committee resolved to recommend that Dr Reeves be granted clinical privileges in obstetrics and gynaecology.

The Appointment of Dr Reeves

- 3.56 On 2 April 2002, the appointments process was carried out by the Medical and Dental Appointments Advisory Committee. It was the role of the Medical and Dental Appointments Advisory Committee to interview the applicants.

- 3.57 Dr Mortimer was a member of the Medical and Dental Appointments Advisory Committee, together with the Chairman of the Board, Mr Gratton Wilson, Dr Robinson, Dr Simonson, and 6 other members (Dr Mark Oakley, Dr John Berick, Dr Peter Davis, Dr Craig Brown, Dr Jonathon Williams, Ms Elizabeth Akmentins). In the course of the meeting, 3 applicants were interviewed for the position of specialist obstetrician gynaecologist, including Dr Reeves.

- 3.58 Like the Credentials Committee, the Medical and Dental Appointments Advisory Committee met by teleconference.

- 3.59 A question arose during the course of this Inquiry as to whether the members of the Medical and Dental Appointments Advisory Committee, apart from Dr Mortimer, received a copy of Dr Reeves' application and supporting documentation. Both Dr Mortimer and Dr Arthurson gave evidence that, in 2002, it was not the practice for the Director of Medical Services to distribute to each and every member of the Medical and Dental Appointments Advisory Committee the documentation relating to each candidate.⁸³ It would seem however that the committee members had received a meeting agenda and a copy of the minutes of the Credentials Committee meeting.⁸⁴

Dr Mortimer cannot recall whether the other members of the Medical and Dental Appointments Advisory Committee had any other documentation before them in relation to Dr Reeves.⁸⁵

3.60 Dr Robinson recalls receiving a bundle of documents before the meeting of 2 April 2002. Dr Robinson does not recall specifically what documents were included in relation to Dr Reeves' application. However, she informed the Inquiry that it was the usual practice for a doctor's application, consisting generally of a letter of interest and curriculum vitae, to be distributed to the members of the Medical and Dental Appointments Advisory Committee. Dr Robinson said that it would be unusual for the Medical and Dental Appointments Advisory Committee to consider any application without these documents having been circulated. Mr Wilson, the Chairman of the Board of the Southern Area Health Service, who also chaired the appointments committee meeting, said that he would expect that the committee members would have received Dr Reeves' application.⁸⁶

3.61 The Area Health Service files show that, on 28 March 2002 and 2 April 2002, Dr Arthurson sent to the members of the Medical and Dental Appointments Advisory Committee a number of documents in preparation for the meeting, including a copy of the agenda and interview questions. The other documents were not relevant to Dr Reeves' candidature. They included letters received from one of the other applicants, a practice company, Obstetricare Pty Ltd, represented by 2 doctors, that had been providing services to the Area Health Service in the area of gynaecology and obstetrics. They also included referee reports in relation to an applicant for the position of VMO anaesthetist at Bega District Hospital, which was also to be considered at the meeting. The files do not record that any other documents were distributed. If they were distributed, I would expect to see a record on the file in a form similar to those to which I have just referred. The minutes make it plain that the letter of the Medical Board of 27 December 2001 was not distributed to members of any of the committees. It is difficult to understand why, if the application of Dr Reeves was distributed that the Medical Board letter, an integral part of it, was not.

3.62 In my view, the weight of evidence supports a finding that Dr Reeves' application, curriculum vitae, and the other supporting material he submitted, were not distributed to each member of the Medical and Dental Appointments Advisory Committee.

3.63 It was practice at the time to put the same list of questions to each applicant for the same position. The list of questions for the position of specialist obstetrician gynaecologist had been circulated to the committee members by facsimile on the day of the meeting. Eight questions were asked, as follows:

1. Please tell us what you understand are the duties and responsibilities of this position and why you are interested.
2. What do you consider your greatest strengths?
3. All of us have areas in which we could improve our overall performance. What are some areas in which you could improve?
4. Relationships between specialists, general practitioners, midwives and health service managers are sometimes strained. How would you manage conflict to ensure good teamwork in patient care?
5. Everybody has an interest in maintaining and improving the quality of care. How would you act to promote this in the Bega Valley?

6. The hospitals need specialist cover 365 days per year.
How can this be achieved?

7. Two candidates) You have conditional registration. Can you tell us about the circumstances that led to these conditions being imposed and what they mean for your current practice?

8. Any questions of us?

3.64 Dr Mortimer took the minutes of the meeting.⁸⁷ The minutes do not contain any reference to the question of Dr Reeves' conditional registration. None of the witnesses examined in the course of the Inquiry who were asked about Question 7 recall the answer given by Dr Reeves to that question. What is clear, however, is that Dr Reeves again failed to disclose that his registration was subject to an order that he cease the clinical practice of obstetrics.

3.65 In her evidence, Dr Robinson recalled that Dr Reeves was quite open during the interview about the fact that he had conditional registration. Dr Robinsons recalls that he in fact raised the conditions as an issue.⁸⁸

3.66 Although he made no notes about the answer given by Dr Reeves to Question 1, Dr Mortimer considers that it would have been difficult to answer that question without referring to obstetrics.⁸⁹ In particular the minutes note that Dr Reeves:

demonstrated an understanding of the requirements of the position.

Dr Reeves' own account of what was said during the interview on this subject was as follows:

I was told by the people who were on the interviewing committee that none of the other applicants wanted to do obstetrics at all.⁹⁰

I was asked about obstetrics and I said that I wouldn't do it electively, but I could do emergencies because that's what I understood my role to be. I don't believe that's correct but that's what I believed at the time.⁹¹

3.67 In his evidence, Dr Simonson stated that the context of Question 6 was that the successful candidate would, on occasion, be called upon to provide emergency caesarean sections in the event that GP obstetricians required such support.⁹² Dr Simonson did not know at the time of interview that Dr Reeves was the subject of an order of the Professional Standards Committee of the Medical Board that he not practice obstetrics.⁹³

3.68 Dr Robinson recalls that the question of obstetric services was raised at the meeting and that Dr Reeves indicated that he was looking for a less strenuous lifestyle and that he would focus more on gynaecology than on obstetrics. Dr Robinson said:

he was alive to the fact that we needed to have a specialist obstetrics services and therefore would provide that back-up and support to the GP obstetricians.⁹⁴

3.69 Dr Robinson stated that Question 6 related to the need to ensure there was specialist emergency cover all year round. The question sought to elicit from the applicant his or her proposal as to the arrangements that the Area Health Service should put in place, in the event the successful applicant took leave, to enable 365 day per year coverage by a specialist obstetrician. The aim of the Area Health Service was to establish a cohort of peers who would provide such specialist coverage for each other.⁹⁵

- 3.70 Dr Robinson did not know that Dr Reeves was the subject of an order of the Professional Standards Committee of the Medical Board that he not practice obstetrics. Dr Robinson said that a great deal of trust is placed in doctors during interviews on the expectation that they would provide all relevant information. In her view, this trust extends to all professionals.⁹⁶
- 3.71 Mr Wilson, Chairman of the board of the former Southern Area Health Service, gave evidence to the Inquiry that, in his recollection, at the interview Dr Reeves said that he wanted to provide a gynaecology service and an obstetric consultation service to the local general practitioners. Mr Wilson said that Dr Reeves made it clear that he did not intend to establish a private obstetrics practice.⁹⁷ At the hearing, Mr Wilson agreed that the documents created in 2002 relevant to Dr Reeves' appointment, including his Fee-For-Service Contract, demonstrated that Dr Reeves was appointed to fill more than a consultative role in the area of obstetrics, as the appointment extended to services such as caesarean sections if required.⁹⁸
- 3.72 During the meeting, 2 other candidates were interviewed. One of the candidates, the practice company, was not favoured due to issues relating to medical indemnity and the level of coverage its doctors were able to offer.
- 3.73 The decision of the Medical and Dental Appointments Advisory Committee was unanimous in recommending Dr Reeves' appointment.⁹⁹ The minutes note:

There was a discussion on the merits of the candidates. **It was RECOMMENDED that Dr Graeme Reeves be offered the position.** The two other candidates were considered unsuitable for the position, although it was noted that Obstetricare could provide an alternative model of service that is a more limited service. This option would have to be the subject of further consideration should Dr Reeves not take up the offer.

Dr Reeves considered to have interviewed well. He demonstrated an understanding of the requirements of the position. [the other applicant] did not clearly demonstrate an understanding of the requirements of the position. He gave short responses, sometimes not fully answering the question put.

The Committee discussed work and leave arrangements and it was noted that Dr Reeves would need to be able to take a reasonable amount of leave. This needs to happen, notwithstanding any difficulties experienced in arranging cover.

Board approval of the appointment

- 3.74 On 12 April 2002, the board of the Southern Area Health Service met and adopted the recommendation of the Medical and Dental Appointments Advisory Committee that Dr Reeves be offered the position of specialist obstetrician gynaecologist. The attendees were:

Chairman	Mr Gratton Wilson
Director	Ms Karen Kemp
Director	Ms Elizabeth Akmentins
Director	Mr Michael Veitch
Director	Mr Garry Arkin
Director	Mr Tom Slookee
Director	Dr Bryan Young
CEO	Dr Denise Robinson

Mr Bill Dargaville (non-board member)
Dr Jon Mortimer (non-board member)
Dr Peter Davis (non-board member)
Ms Bianca Anthon (non-board member)

- 3.75 There is no note in the minutes of the board meeting of any discussion held about the recommendation for the appointment of Dr Reeves, except:
- Dr J Mortimer spoke to the minutes of the Medical & Dental Appointments Advisory Committee dated 2 April 2002.
- 3.76 Dr Mortimer cannot recall his attendance at this meeting.¹⁰⁰ He said that he did not normally attend board meetings but he accepted that he must have attended in the place of the Director of Medical Services.
- 3.77 Dr Robinson said that it was the board's practice to rely on the minutes of the appointments committee as constituting the written advice and recommendation to the board from that committee and that the minutes of the appointments committee would have been circulated to the members of the board.¹⁰¹ Dr Robinson does not recall any discussion of the recommendation relating to Dr Reeves' appointment.
- 3.78 I conclude that it is unlikely that there was any substantial discussion about Dr Reeves' appointment in light of the need for the appointment to be made, the single recommendation from the appointments committee, the fact that 3 of the Board members were members of the appointments committee and the absence of any suggestion of controversy about the appointment.
- 3.79 On the day of the board's meeting, Dr Reeves telephoned the Medical Board to advise that he had quit general practice and moved to Pambula where he was recommencing a gynaecology practice. There is no evidence that Dr Reeves' was advised of the appointment on that day and it therefore appears to have been a coincidence that he notified the Medical Board on the very day his appointment was formally approved.

Referee check

- 3.80 The general practice in 2002 was to seek referee reports in relation to the preferred candidate only.¹⁰² There was no requirement, nor was it the practice, to seek referee reports before the Credentials Committee or the Appointments Committee considered applications.
- 3.81 Dr Reeves nominated 3 referees. On 11 April 2002, which was the day before the Southern Area Health Service Board met to consider the appointment of Dr Reeves, Dr Mortimer contacted one of the referees, Dr Garrity, an obstetrician at Hornsby Kuring-gai Hospital and the Sydney Adventist Hospital. Dr Mortimer's notes of that conversation record as follows:

Referee's report for Dr Graeme Reeves (transcribed from rough notes). Phone call 11/4/02. Transcribed 15/4/02. Very well trained, technically very well trained. Had depression. There was a catastrophe. Few arguments with nursing staff and junior registrars. OK when normal and has apparently been normal. Last heard not meant to do obstetrics. Was holding fort at Hornsby. Dispensed with services. OK as long as treatment has been successful.

3.82 In his evidence, Dr Mortimer's response to that referee report was as follows:

I wasn't surprised that Dr Garrity said that. I already knew from his description that this doctor had been well trained, was well regarded, that there had been a period of depression, that he was in the impaired registrants program, which we knew from the letter from the Medical Board, and I would be surprised if somebody who had gone through that did not have a period in their practice where the Medical Board put very severe restrictions on their practice, including perhaps not practice medicine at all. A person who suffers a serious mental illness who goes into the impaired registrants program is very likely to have a period where the conditions on their registration preclude most, if not all, of their practice. So that didn't surprise me that that was the case and that Dr Garrity had said that he was not meant to do obstetrics. The Medical Board letter was quite recent, the date was quite recent, so I relied on that as being the most recent and accurate information, and the Medical Board would be the source of information for information on current conditions on registration.¹⁰³

Page 36

3.83 Dr Mortimer's interpretation of Dr Garrity's comments took into account his interpretation of the list of conditions provided by Dr Reeves by way of proof of registration.

Dr Mortimer stated that if there had been a condition on registration precluding a person from working in a certain area of practice, he would have expected to see 2 employment-related conditions listed in the letter from the Medical Board of 27 December 2001. One condition would refer to the restriction itself and the other would be a monitoring-relating condition giving permission to the Medical Board to receive information from the Health Insurance Commission about the services provided by the practitioner.¹⁰⁴

3.84 Dr Mortimer also noted that condition 5 in the Medical Board's letter required that Dr Reeves be reviewed by the Medical Board every 12 months. In Dr Mortimer's view, an interval of 12 months suggested that the Medical Board was content with Dr Reeves' progress and did not need to monitor Dr Reeves very closely.¹⁰⁵

3.85 Dr Mortimer has explained that he does not recall why he did not, or was unable, to contact Dr Phillip Mutton, one of the other referees nominated by Dr Reeves. Dr Mortimer explained that the third referee, Dr Ian Borody, had died unexpectedly in March 2002.

Temporary appointment as locum

3.86 Prior to completion of the appointment process, Dr Reeves was granted a temporary appointment, of 4 days' duration between 10 and 13 April 2002, as a specialist obstetrician gynaecologist, at Pambula District Hospital.

3.87 On 10 April 2002 the Director of Medical Services wrote to Dr Reeves confirming the temporary appointment at Pambula Hospital to act as locum tenens for Dr Frank Simonson for the period 10-13 April 2002. That letter informed Dr Reeves that his duties during that period were to provide:

an on-call obstetric service for emergency caesarean sections, if indicated

and that his clinical privileges:

are consistent with the credentials as a specialist obstetrician and gynaecologist, constrained by the delineated role of the hospital.

- 3.88 The locum position arose when Dr Simonson asked Dr Reeves if he would cover him at Pambula Hospital due to his unavailability between 10 and 13 April 2002. Dr Simonson was the only person at Pambula accredited to do caesarean sections in emergency circumstances. According to Dr Reeves, Dr Simonson asked him if he would provide the cover and applied for the locum position on Dr Reeves' behalf.¹⁰⁶ Dr Reeves did not tell Dr Simonson that he was not allowed to practise obstetrics.¹⁰⁷
- 3.89 Dr Simonson cannot specifically remember the circumstances surrounding the temporary appointment. However he stated that he would not have suggested Dr Reeves as an appropriate person to provide locum cover if he had known about the order barring him from practising obstetrics.¹⁰⁸ This was because Dr Reeves was not entitled under his medical registration to provide an on-call obstetric service for emergency caesarean sections.¹⁰⁹
- 3.90 Dr Reeves gave evidence that he received Dr Arthurson's letter dated 10 April 2002 but that he never received a contract relating to the temporary appointment.¹¹⁰ Dr Arthurson's letter confirming the temporary appointment referred to "the attached Contract for Liability Coverage and the fee for service contract, which is deemed to be Annexure B to the Contract for Liability Coverage" and required "[t]hese contracts" to "be signed and returned to me as soon as possible". An unsigned Fee-For-Service Contract between the Southern Area Health Service and Dr Reeves is contained in the Area Health Service files. It grants clinical privileges consistent with credentials as a specialist obstetrician and gynaecologist at Pambula District Hospital and requires the provision of an on-call and obstetric service performing emergency caesarean sections, if indicated.
- 3.91 Although the records of the Southern Area Health Service do not contain a signed copy of the Fee-For-Service Contract, Dr Reeves admitted that when he received Dr Arthurson's letter of 10 April he understood that he had a contract with the Area Health Service whose terms were consistent with the terms of the contract contained within the file¹¹¹ (albeit he did not receive the written contract in 2002).
- 3.92 In the event, Dr Reeves was not called upon to provide any obstetric services during the period of the temporary appointment.
- 3.93 Plainly, agreeing to take up such an appointment was a breach of the order of the Professional Standards Committee prohibiting Dr Reeves from practising obstetrics. The various explanations given by Dr Reeves as to why he accepted the locum position were not consistent. He agreed that it was apparent to him when he received the letter appointing him to the locum position that Dr Arthurson did not know about the order banning him from obstetric practice.¹¹² Dr Reeves said that he assumed that Dr Arthurson would make checks about his entitlement to practise medicine. He acknowledged that he did not do or say anything at the time of the temporary appointment to apprise Dr Arthurson of the true position.¹¹³ However, he thought that he would be entitled to perform the specified services if an emergency arose.¹¹⁴
- 3.94 According to Dr Reeves, Pambula Hospital would have had to close its obstetric facilities if Dr Simonson was not able to obtain temporary cover. This allegedly presented Dr Reeves with a quandary as he was the only person within 100 kilometres who could provide the service.¹¹⁵ He acknowledged however that the services were

capable of being provided at Bega Hospital, which was approximately 30 kilometres away.¹¹⁶

- 3.95 While Dr Reeves sought to justify his acceptance of the temporary appointment on the basis of his argument about the practice of 'emergency medicine' (which I further canvass in Chapter 5), he also acknowledged that he knew that the requirements of the appointment were contrary to the order of the Professional Standards Committee and contrary to the specific advice that he had been given during one of his review interviews before the Medical Board by Dr Amos.¹¹⁷ Indeed, he had known this at the time of his temporary appointment and admits to having deceived both Dr Simonson and Dr Arthurson with regard to his locum appointment in Pambula District Hospital.¹¹⁸

Offer of Fee-For-Services Contract

- 3.96 Dr Arthurson sent Dr Reeves a letter of offer on 17 April 2002 advising that the Board of the Southern Area Health Service at its meeting on 12 April 2002 had:

approved your appointment as the Visiting Medical Officer (VMO) Obstetrician and Gynaecologist at Bega and Pambula District Hospitals

and indicating that the Board of the Southern Area Health Service had:

granted clinical privileges consistent with your credentials as a specialist obstetrician and gynaecologist: these privileges are constrained by the delineated roles of the hospitals.

- 3.97 The letter noted that another letter concerning medical indemnity insurance and containing an offer of a Contract of Liability Coverage was attached and that Dr Reeves would shortly be offered a Fee-For-Service Contract.
- 3.98 Dr Reeves signed a Contract of Liability Coverage on 17 April 2002.
- 3.99 Dr Reeves' evidence was that he never signed a Fee-For-Service Contract granting him clinical privileges in obstetrics or requiring him to perform obstetric services.
- 3.100 According to Dr Reeves, on 24 April 2002 he was called to Pambula District Hospital and asked to sign a projected budget relating to his appointment.¹¹⁹ He said that Raymond Toft, then acting Health Service Manager of Pambula District Hospital, asked him to sign pages numbered 15, 17 and 18 of a document.¹²⁰ Dr Reeves said that he was not given the complete document, which consisted of 18 pages and that Mr Toft explained that the purpose of his signature was to allow the preparation of a budget for the Treasury Managed Fund. According to Dr Reeves, he was told by Mr Toft that the contract would be forwarded at a later date but this never happened.¹²¹ The budget related to gynaecological procedures at Pambula Hospital, with no budget for obstetric services.¹²² Dr Reeves stated in evidence:

There is no mention of obstetric services whatsoever on the document that I signed.

- 3.101 Pages 15 of the Fee-For-Service Contract was a signature page. Pages 17 and 18 contained Schedule 2 and specified the services the Visiting Medical Officer was to provide, a services plan and budget. The Services specified included the following:

To perform elective and emergency gynaecological procedures within the role delineation of each hospital.

Provide an on call obstetric service and perform emergency caesarean sections, if indicated, in accordance with the roster published by the Hospital following consultation with visiting medical officers.

Work with other visiting medical officers and the Health Service to ensure that a full on-call roster is provided for gynaecological and obstetric services.

- 3.102 The budget (on page 18), however, provided only for a fixed dollar value for gynaecological procedures.
- 3.103 Dr Reeves said that he was not given a copy of page 16 containing Schedule 1 specifying the clinical privileges at Pambula District Hospital and Bega District Hospital as follows:

Clinical privileges are consistent with credentials as a specialist obstetrician and gynaecologist constrained by the delineated role of the hospitals.

- 3.104 Dr Arthurson said that ordinarily the contracts for new appointments were produced out of his office, although he does not specifically recall the circumstances in which Dr Reeves' contract was produced. It was the general practice to produce one original document, to obtain the doctor's signature and then to provide the doctor with a copy of the contract once the relevant persons on behalf of the Area Health Service had counter-signed.¹²³ Contracts produced in Dr Arthurson's office were sent out either by internal mail or email to the relevant facility manager, in this case Mr Toft.
- 3.105 Mr Toft did not recall the precise circumstances in which Dr Reeves' Fee-For-Service Contract was produced or signed. He said, however, in his evidence to the Inquiry, that it was the practice at the time for the Area Health Service to provide to him a pro forma contract relating to an appointment. Mr Toft then inserted into that contract, and the Contract for Liability Coverage, the name of the doctor and any other specific details such as the services to be provided, printed the contracts and arranged for the appointee's signature. He then sent the contracts back to Dr Arthurson's office for the purpose of having them signed by the Area Health Service.¹²⁴
- 3.106 Mr Toft recalled Dr Reeves signing the Fee-For-Service Contract but does not recall where it took place.¹²⁵ He recalls being given a budgetary figure for insertion in page 18 of the contract.
- 3.107 Mr Toft said that his normal practice was to provide every page of the Fee-For-Service Contract to the appointee. He does not recall any reason why he would not have given the full contract to Dr Reeves.¹²⁶ Mr Toft said that the contracts carrying Dr Reeves' signature are in the format that he is familiar with.¹²⁷ Mr Toft agreed however that there was a deadline for signing and submitting contracts for the purposes of the Treasury Managed Fund. He also testified that it was not the normal practice to send the Contract of Liability Coverage directly to the appointee,¹²⁸ as appears to have happened under Dr Arthurson's letter of 17 April 2002. However in his Mr Toft's view the documents suggest that he would have carried out his ordinary practice on this occasion.
- 3.108 The Fee-For-Services Contract was signed on behalf of the Area Health Service by Dr Robinson, whose signature was witnessed by Dr Arthurson.

- 3.109 Given that Schedule 2 refers to an on call obstetric service, Dr Reeves' evidence that the document he signed did not refer to obstetric services and that he only ever accepted a position as gynaecologist is perplexing.
- 3.110 I found Mr Toft's evidence as to what generally occurred when contracts were signed credible. I do not accept that Dr Reeves signed only 3 pages of the Fee-For-Service Contract or that he only sighted and signed pages that did not refer to a requirement to provide obstetric services. I consider it more likely than not that Dr Reeves was provided the entire Fee-For-Service Contract by Mr Toft.
- 3.111 In any event, in my view, it is beyond question that Dr Reeves knew that it was a requirement of the position that he provide obstetric services. By the time he signed the Fee-For-Service Contract, Dr Mortimer had informed him about the need for the appointee to provide obstetric back-up to GP obstetricians, he had received the letter from Dr Arthurson dated 17 April 2002 noting clinical privileges in obstetrics and he had also accepted the locum appointment on 10 April 2002 as specialist obstetrician gynaecologist at Pambula District Hospital. Moreover, the course of events following the signing of the Fee-For-Service Contract confirms that he had an expectation and understanding that he had been granted clinical privileges in obstetrics and had agreed to exercise them.

Dr Reeves' notification of appointment to the Medical Board

- 3.112 As noted earlier, on 12 April 2002, Dr Reeves telephoned the Medical Board to advise that he had quit general practice and moved to Pambula where he was recommencing a gynaecology practice. Two days later he addressed a letter to "Evan Rawstron and Members of the Performance Committee" of the Medical Board confirming his appointment as a specialist gynaecologist. Dr Reeves informed Mr Rawstron that he had ceased general practice and that he had been successful in obtaining a VMO position as a "Specialist Gynaecologist". He wrote:

In Both My written application and Interviews I have fully explained My Impaired status and Conditions of my Registration including copies of the latest conditions as listed by The November 2001 Panel.

The Medical Administration and Board both indicated to me that My appointment and duties would be compatible with my Registration and I have been able to confirm this with the GP, Division with whom I met last weekend.

...

In this Area Obstetric Services are the Realm of accredited GP Obstetricians (Seven) most of whom I have met and explained that I will not be doing Obstetrics, further my Indemnity is for Gynaecology Only a point I also emphasised in my application and interview...

- 3.113 In his evidence, Dr Reeves did not accept that this letter was intended to deceive the Medical Board.¹²⁹ This stemmed from what he called a confusion about the difference between emergency obstetrics and obstetric practice.¹³⁰ This issue is discussed in Chapter 5 of this report.
- 3.114 I do not accept that the letter was not intended to deceive the Medical Board. By 12 April 2002, Dr Reeves knew that obstetric back-up was a requirement of the permanent position and, further, he had accepted a temporary appointment as locum for the purpose of providing emergency obstetric cover at Pambula Hospital. His

statements that he “will not be doing Obstetrics”, that he had fully explained his registration conditions and that he had indemnity only for gynaecology were carefully constructed to conceal the true extent of the medical duties he had contracted to provide to the Southern Area Health Service.

- 3.115 Dr Reeves was required to give prior notice to the Medical Board about any change in the nature or place of his practice, by reason of the impairment conditions specified in the Medical Board’s letter of 27 December 2001. Given the acceptance of the locum position on 10 April 2002, Dr Reeves also failed to comply with the notification obligation.
- 3.116 The Medical Board’s records show that its first response to Dr Reeves’ letter of 14 April 2002 was made on 11 September 2002 when it wrote to him seeking his new practice address, followed by a letter on 20 September 2002 relating to the Performance Assessment Program.

¹¹ The background to the Performance Assessment taking place in December 2003 is as follows. On 23 April 2002, having received Dr Reeves’ facsimile of 14 April 2002 notifying the Medical Board of his change in place of practice and requesting to be excluded from the Performance Program, the Performance Committee resolved that a performance assessment of Dr Reeves’ gynaecological practice in Pambula should be conducted. On 28 May 2002, the Performance Committee noted that the assessment was on hold to allow Dr Reeves time to establish his new gynaecology practice. The Medical Board wrote to Dr Reeves on 20 September 2002 to arrange the performance assessment and requested him to fill out a pre-visit questionnaire. The letter noted that Dr Reeves was unwilling to participate in the Program and highlighted that failure to participate without reasonable excuse is evidence that the doctor’s professional performance is unsatisfactory. It also stated that no Board Review Interview would need to take place in 2002 due to Dr Reeves’ participation in the Performance Program. Dr Reeves filled out the pre-visit questionnaire on 24 September 2002. The Coordinator of the Performance Assessment Program contacted Dr Reeves on 17 January 2003 with a view to arranging the assessment. On 25 March 2003, the Performance Committee resolved that the assessment be deferred until the conclusion of an application for review lodged by Dr Reeves in the Medical Tribunal against the orders of the Professional Standards Committee of 1997 as well as an appeal he had lodged against the decision of a Section 66 Inquiry. I discuss Dr Reeves’ appeals later in this Report. On 26 May 2003, the Performance Committee considered that Dr Reeves’ appeal to the Medical Tribunal would take longer than expected and that Dr Reeves’ performance assessment should therefore proceed. The Medical Board then made arrangements for the performance assessment to take place on 8 December 2003. Between 22 October 2002 and 25 March 2003, the Performance Committee of the Medical Board had resolved that 3 other complaints received about Dr Reeves should be dealt with as part of the Performance Assessment Program.

¹² Transcript 19.13; transcript 125.126 (Graeme Reeves).

¹³ Transcript 19.38; transcript 22.40 (Graeme Reeves).

¹⁴ Southern Area Health Service *Annual Report*, 2002-2003.

¹⁵ Transcript 297.9 (Dr Robinson).

¹⁶ Dr Robinson was Chief Executive Officer between August 2001 and March 2003 and based at the Area Health Service office in Queanbeyan.

¹⁷ Statutory declaration of Dr Mortimer dated 30 June 2008.

¹⁸ Transcript 298.27 (Dr Robinson).

¹⁹ Transcript 299.8 (Dr Robinson).

²⁰ Transcript 299.16, 28; transcript 310. 31 (Dr Robinson).

²¹ Transcript 315.23 (Dr Robinson).

²² Transcript 202.5 (Dr Mortimer); transcript 217.1 (Dr Arthurson).

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- ²³ Transcript 298.37, 300.40, 301.31, 315.47, 316.5 (Dr Denise Robinson).
- ²⁴ Affidavit of Jon Mortimer sworn 5 September 2003.
- ²⁵ Transcript 214-215 (Dr Arthurson); transcript 298.27, transcript 315-316 (Dr Robinson).
- ²⁶ Transcript 22.29 (Graeme Reeves).
- ²⁷ Transcript 20.18 (Graeme Reeves).
- ²⁸ Transcript 25 (Graeme Reeves).
- ²⁹ Transcript 25.48 (Graeme Reeves).
- ³⁰ Transcript 26.23 (Graeme Reeves).
- ³¹ Transcript 26.3 (Graeme Reeves).
- ³² Transcript 24.8; transcript 26.45 (Graeme Reeves).
- ³³ Transcript 34.19 (Graeme Reeves); transcript 201.9 (Dr Mortimer).
- ³⁴ Transcript 30.34, transcript 27.39, transcript 34.19-35 (Graeme Reeves).
- ³⁵ Transcript 35.31 (Graeme Reeves); Transcript 216.14 (Dr Arthurson).
- ³⁶ Transcript 217.22 (Dr Arthurson).
- ³⁷ Transcript 39.40 (Graeme Reeves).
- ³⁸ Transcript 40.4 (Graeme Reeves).
- ³⁹ Transcript 36.22 (Graeme Reeves).
- ⁴⁰ Transcript 37.40, transcript 38.21, transcript 39.34 (Graeme Reeves).
- ⁴¹ Transcript 220.29 (Dr Arthurson).
- ⁴² Transcript 219.21 (Dr Arthurson).
- ⁴³ Transcript 220.15 (Dr Arthurson).
- ⁴⁴ Transcript 219.18 (Dr Arthurson).
- ⁴⁵ Transcript 40.9 (Graeme Reeves).
- ⁴⁶ Transcript 218.41 (Dr Arthurson).
- ⁴⁷ Transcript 219.36 (Dr Arthurson).
- ⁴⁸ Transcript 219.42 (Dr Arthurson).
- ⁴⁹ The bar coding labels on the document are a cataloguing artefact created by the Special Commission and were not on the document in its original form. Nor were they on the copy document provided to the Southern Area Health Service.
- ⁵⁰ Transcript of evidence of Graeme Reeves in the Medical Tribunal 2004, page 64.
- ⁵¹ Transcript 41.11 (Graeme Reeves).
- ⁵² Transcript 42.23 (Graeme Reeves).
- ⁵³ Transcript 43.15-32, transcript 46.12-26 (Graeme Reeves).
- ⁵⁴ Transcript 46.16 (Graeme Reeves).
- ⁵⁵ Transcript 45.24, 44 (Graeme Reeves).
- ⁵⁶ Transcript 46.20 (Graeme Reeves).
- ⁵⁷ Transcript 44.44 (Graeme Reeves).
- ⁵⁸ Transcript 45.4 (Graeme Reeves).
- ⁵⁹ Transcript 73.26 (Graeme Reeves).
- ⁶⁰ Transcript 75.36-45 (Graeme Reeves).
- ⁶¹ Transcript 76.8 (Graeme Reeves).
- ⁶² Section 25, *Health Services Act 1997*.
- ⁶³ Southern Area Health Service, *Annual Report 2001-2002*.
- ⁶⁴ Section 28, *Health Services Act 1997*.
- ⁶⁵ By-law 51.
- ⁶⁶ By-law 54.
- ⁶⁷ Sections 24 and 25, *Health Services Act 1997*.
- ⁶⁸ *National Guidelines for Credentials and Clinical Privileges*, Australian Commission on Safety and Quality in Health Care, July 2002, copyright Commonwealth of Australia reproduced by permission.

- ⁶⁹ The same definition is included in the Model-By-laws required to be adopted by area health services in relation to the appointment of visiting practitioners, pursuant to section 39 of the *Health Services Act 1997* (with the except that that definition refers to “hospitals or health services”).
- ⁷⁰ Transcript 162.1 (Dr Mortimer).
- ⁷¹ Transcript 162.40 (Dr Mortimer).
- ⁷² Transcript 167.31 (Dr Mortimer).
- ⁷³ Transcript 231.41 (Dr Arthurson).
- ⁷⁴ Transcript 166.13-40 (Dr Mortimer).
- ⁷⁵ Transcript 166.36 (Dr Mortimer); transcript 227.37 (Dr Arthurson).
- ⁷⁶ Transcript 169.14 (Dr Mortimer).
- ⁷⁷ Transcript 351.37 (Dr Simonson).
- ⁷⁸ Transcript 353.6, 20; transcript 367.10-31 (Dr Simonson).
- ⁷⁹ Transcript 358.17, transcript 367.17 (Dr Simonson).
- ⁸⁰ Transcript 350.44 (Dr Simonson).
- ⁸¹ Transcript 165.33 (Dr Mortimer).
- ⁸² Transcript 166.6; transcript 169.27 (Dr Mortimer).
- ⁸³ Transcript 174.27; transcript 175.32 (Dr Mortimer); transcript 231.41, 235.35, 236.4 (Dr Arthurson).
- ⁸⁴ Transcript 173.43 (Dr Mortimer); as referred to, also, in the Agenda of the meeting.
- ⁸⁵ Transcript 175.13 (Dr Mortimer).
- ⁸⁶ Transcript 420.25 (Mr Wilson).
- ⁸⁷ Transcript 171.19-31(Dr Mortimer).
- ⁸⁸ Transcript 305.13, transcript 312.37 (Dr Robinson).
- ⁸⁹ Transcript 173.10 (Dr Mortimer).
- ⁹⁰ Transcript 128.19 (Graeme Reeves).
- ⁹¹ Transcript 128.43 (Graeme Reeves).
- ⁹² Transcript 365.47 (Dr Simonson).
- ⁹³ Transcript 367.46 (Dr Simonson).
- ⁹⁴ Transcript 313.14 (Dr Robinson).
- ⁹⁵ Transcript 314.23 (Dr Robinson).
- ⁹⁶ Transcript 311.27 (Dr Robinson).
- ⁹⁷ Transcript 416.9-39; transcript 419.10 (Mr Wilson).
- ⁹⁸ Transcript 426.18.
- ⁹⁹ Transcript 171.1 (Dr Mortimer).
- ¹⁰⁰ Transcript 188.29 (Dr Mortimer).
- ¹⁰¹ Transcript 322.18 (Dr Robinson).
- ¹⁰² Transcript 176.40 (Dr Mortimer); transcript 234.15 (Dr Arthurson); transcript 317.15 (Dr Robinson).
- ¹⁰³ Transcript 178.15 (Dr Mortimer).
- ¹⁰⁴ Transcript 180.11-37 (Dr Mortimer).
- ¹⁰⁵ Transcript 181.8 (Dr Mortimer).
- ¹⁰⁶ Transcript 62.42 (Graeme Reeves).
- ¹⁰⁷ Transcript 62.3 (Graeme Reeves).
- ¹⁰⁸ Transcript 359.4 (Dr Simonson); transcript 39 (Graeme Reeves).
- ¹⁰⁹ Transcript 360.30 (Dr Simonson).
- ¹¹⁰ Transcript 55.19; transcript 56.27 (Graeme Reeves).
- ¹¹¹ Transcript 55.47 (Graeme Reeves).
- ¹¹² Transcript 51.4 (Graeme Reeves).
- ¹¹³ Transcript 51 (Graeme Reeves).

- ¹¹⁴ Transcript 52.40; transcript 57.22 (Graeme Reeves).
- ¹¹⁵ Transcript 53.13, transcript 54.38 (Graeme Reeves).
- ¹¹⁶ Transcript 54.25-38 (Graeme Reeves).
- ¹¹⁷ Transcript 48.42, transcript 49.1 (Graeme Reeves).
- ¹¹⁸ Transcript 62.27 (Graeme Reeves).
- ¹¹⁹ Transcript 69 (Graeme Reeves).
- ¹²⁰ Transcript 68.10; transcript 70.35 (Graeme Reeves).
- ¹²¹ Transcript 71.18 (Graeme Reeves).
- ¹²² Transcript 78.46 (Graeme Reeves).
- ¹²³ Transcript 241.36 (Dr Arthurson).
- ¹²⁴ Transcript 266.15; transcript 269.5; transcript 272.43 (Mr Toft).
- ¹²⁵ Transcript 265.4, (Mr Toft).
- ¹²⁶ Transcript 270.41 (Mr Toft).
- ¹²⁷ Transcript 273.31 (Mr Toft).
- ¹²⁸ Transcript 272.32 (Mr Toft).
- ¹²⁹ Transcript 77.28 (Graeme Reeves).
- ¹³⁰ Transcript 77.37 (Graeme Reeves).

4 Policies and practices: the appointment of a visiting practitioner

Applicable policies	46
No comprehensive policy relating to the appointment process for visiting medical practitioners.....	46
Southern Area Health Service Policies	46
Policies of the NSW Department of Health	46
Credentialing and clinical privileging processes.....	49
Appointments process.....	50
Checking registration status	52
Checking past performance and referee reports.....	53
Job descriptions and advertisements	55
Criminal record check.....	56
Temporary appointment	56

Applicable policies

No comprehensive policy relating to the appointment process for visiting medical practitioners

- 4.1 I am not satisfied that at the time of Dr Reeves' appointment, there was any comprehensive policy of the Department of Health, nor any official policy of the Southern Area Health Service, which contained all of the appropriate standards and processes to be applied in the appointment of visiting medical practitioners.
- 4.2 The board of the Southern Area Health Service had, however, approved the preparation of such a policy on 9 February 2001 based on a recommendation by Dr Mortimer.
- 4.3 Dr Mortimer prepared a policy on behalf of the Area Health Service, *The Process of Appointing Visiting Practitioners* (dated June 2001) in response to the board's resolution of 9 February 2001. There is no evidence however that that policy was submitted to, approved or endorsed by the board of the Southern Area Health Service.

Page 46

Southern Area Health Service Policies

- 4.4 Dr Mortimer gave evidence that he drafted *The Process of Appointing Visiting Practitioners* at a time when no formal policies applied to the appointment of visiting practitioners.¹³¹ It is clear from Dr Mortimer's evidence that he purported to apply that draft policy insofar as he was involved in the recruitment of Dr Reeves to the position of specialist obstetrician gynaecologist.¹³²
- 4.5 Dr Robinson testified that she would have read *The Process of Appointing Visiting Practitioners*.¹³³
- 4.6 Accordingly, I consider the appointment of Dr Reeves in the light of the draft policy *The Process of Appointing Visiting Practitioners*.
- 4.7 Another Southern Area Health Service policy, *Professional Registration* (which was created in August 1991, reviewed in May 1998 and states that it was approved by David O'Neill, HR Manager) stipulated that it was the responsibility of each individual staff member to ensure that his or her registration was maintained and current. It stated that it was the responsibility of each department head to ensure that all professional personnel working within their department, whether salaried or in an honorary capacity, produce evidence of full or provisional registration prior to the commencement of duty. That policy required that regular checks be made to ensure that the staff held current registration. That policy fell short of requiring that current registration status be independently verified.

Policies of the NSW Department of Health

- 4.8 Prior to 2005, the Department of Health promulgated policy through Departmental Circulars.
- 4.9 The Department of Health discontinued the circular system in 2004/2005 with effect from 24 February 2005. Previous circulars which were deemed to be active were re-classified as either Policy Directives or Guidelines and given new document numbers. Policy Directives are documents that must be complied with. Guidelines are documents that provide advice or guidance but do not require compliance. The new system also uses Information Bulletins which provide a mechanism for the distribution of information

within the NSW public health system which is not “policy”. This new system provided a clarity which was previously lacking about mandatory requirements of policies of the Department of Health.

- 4.10 In my view, it is necessary to look at the terms of each circular which may have applied in 2002 to determine, on a case by case basis, whether the circular set out mandatory requirements or, rather, whether it contained guidelines to enable area health services to develop their own local policies.¹³⁴ As a matter of practical reality, unless a policy is reissued or re-endorsed at intervals of no more than 5 years, it is highly unlikely to be within the working knowledge of those undertaking their duties. It would not be reasonable to expect compliance with a policy many years after it is issued, even if it has never been rescinded or replaced. An expectation that compliance is still required fails to take into account changes in the nature and composition of the workforce and the rational life expectancy of the corporate knowledge of an organisation.
- 4.11 It is appropriate to consider those policies of the Department of Health which may have been relevant to the appointment of Dr Reeves.
- 4.12 NSW Health Circular *Credentials – Checking of Trained and Professional Staff* (Circular 80/135 – issued May 1980) applied to “staff who are required to be registered” “working at the hospital, whether salaried or in an honorary capacity”. That policy required that registration be “thoroughly checked”. The expression “thoroughly checked” was not further defined or elaborated upon. In my view, the term “thoroughly checked” was open to interpretation and it may properly have been interpreted merely as a requirement to sight evidence of registration.
- 4.13 In any event, I do not consider that by the early part of 2002 visiting practitioners such as Dr Reeves fell within the definition of honorary staff. I accept that, when originally promulgated in 1980, the circular would have applied to someone in Dr Reeves’ position. However, over 20 years later in 2002, the circular was no longer on its terms applicable to him if for no other reason than the change in the method of appointment of visiting practitioners. The term “honorary medical officer” is defined in section 79 of the *Health Services Act 1997* to be a medical practitioner appointed under an “honorary contract” to provide services as a visiting practitioner. Section 84 defines honorary contract, relevantly, to mean a service contract under which the services are provided otherwise than for monetary remuneration. Nor was Dr Reeves “salaried” within the terms of the circular as the Fee-For-Service Contract did not make him a salaried member of staff. The above circular was reissued as a policy directive in 2005¹³⁵ but was replaced by another policy directive in 2006¹³⁶ (which does not apply to visiting practitioners). Although I received extensive submissions which argued that this policy applied to the appointment of Dr Reeves, and therefore ought to have been followed by the Southern Area Health Service, I do not accept that it did, nor do I accept that officers of the Southern Area Health Service were obliged to comply with it.
- 4.14 The NSW Health Circular *Registration of Professional Personnel* (Circular 81/130 – issued May 1981) required hospitals “to check the registration” of all “professional and trained staff who require a certificate to work”. It stated that no staff were to be “employed before qualifications and current registration” were “confirmed”. The expression “confirmed” was not defined. This circular did not make clear whether or not it applied to visiting practitioners such as Dr Reeves. Although visiting practitioners are not “employed”, the circular may have applied to them through the use of the term “professionals”. Although the circular may have applied to visiting practitioners (which, however, I do not think was made sufficiently clear by its terms), it was issued in 1981, some 21 years before Dr Reeves’ appointment. Practically speaking, given the lengthy intervening period, the circular was unlikely to have been widely recognised by area

health services. In any event, the circular did not require independent verification of registration status. That Circular was re-issued as a policy directive in 2005¹³⁷ (being after Dr Reeves' appointment) and is still in force.

- 4.15 NSW Health Circular *Guidelines for the delineation of clinical privileges of medical staff* (Circular 95/24 – issued 3 April 1995) applied to “senior medical staff” and specifically refers to visiting medical officers. It therefore applied to the recruitment of Dr Reeves. A review of that policy shows that its requirements were reflected in the local Southern Area Health Service policy, *The Process of Appointing Visiting Practitioners*.
- 4.16 NSW Health Circular *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct* (Circular 97/80 – issued August 1997) applied to all persons working “in any capacity” in the Health Service. It therefore applied to the appointment of Dr Reeves as a visiting practitioner. It contained a number of requirements, including that a criminal record check be carried out prior to appointment and the adoption of a structured approach to reference checking. That circular was reissued as a policy directive in 2005¹³⁸ and that policy directive was replaced by other policy directives in 2008.¹³⁹
- 4.17 NSW Health Circular *Employment Screening of Staff and Other Persons in Child Related Areas – Policy and Procedure* (Circulars 2000/55 and 2000/76, issued on 7 July 2000) applied to all persons working “in any capacity” in the Health Service. It therefore applied to the appointment of Dr Reeves as a visiting practitioner. It required screening for child-related employment to take place. That circular was reissued as a policy directive in 2005¹⁴⁰ which was replaced by another policy directive in June 2008.¹⁴¹
- 4.18 NSW Health Circular *A Framework for Recruitment and Selection* (Circular 2001/74 – issued on 8 August 2001) contained detailed requirements about the recruitment process. It required for example that referee checks be used in arriving at a selection recommendation and that the convenor of the selection committee be trained in recruitment and selection processes. The Circular stated that the document was intended to provide guidance to health services in the development or review of local procedures. However, in my view this policy did not and could not be taken to apply to visiting practitioners. One of the requirements was that all permanent appointments be published within the Health Service in accordance with the *Government and Related Employees Appeal Tribunal Act 1980*. That legislation does not apply to visiting practitioners. The policy was expressed to apply to:
- Permanent appointments to vacancies other than appointments through redeployment or transfer at the same grade
 - Temporary appointments to positions for the duration of more than 13 weeks
- 4.19 The term ‘appointment’ suggests that the policy might apply to visiting practitioners. However the purpose of the policy was to:
- Specify the principles and minimum standards applying to the recruitment and selection of Health Service employees
- 4.20 Dr Mortimer made submissions to the Inquiry that it did not apply to visiting practitioners. I accept that submission. In my view, the terms of the policy meant that it did not apply to the appointment of Dr Reeves.

- 4.21 Indeed, Dr Mortimer stated that no policy, except for the Southern Area Health Service policy referred to above which he drafted,¹⁴² was applicable to the appointment of Dr Reeves. Dr Mortimer acknowledged in his submissions to the Inquiry that NSW Health Circular dated 1997 *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct* contained relevant requirements in relation to reference checking but stated that that policy had not been translated into local policy by the Southern Area Health Service. I do not accept that there was any need for this policy to be translated into a local policy. The terms of the Circular make it plain that it applied to all organisations within NSW Health, including area health services. However, Dr Mortimer can be forgiven for overlooking the requirements of structured reference checking included in that policy as they were not a prominent feature of it, nor would the title of the circular suggest that that process would be included in the Circular.

Credentialing and clinical privileging processes

- 4.22 The draft Southern Area Health Service policy which was being applied in practice, *The Process of Appointing Visiting Practitioners*, required a credentialing process to be carried out by a Credentials Subcommittee of the Medical Appointments Advisory Committee.
- 4.23 The draft policy recommended that an external representative be included on the subcommittee and stated that the subcommittee may include a doctor from the discipline in which privileges were sought. In this respect, the wording of the policy differed slightly from the NSW Health Circular *Guidelines for the delineation of clinical privileges of medical staff*, which recommended that the Credentials Committee include at least one doctor from the discipline in which privileges were sought. While the wording differed, the Southern Area Health Service policy referred to the Circular with respect to the composition of the Credentials Subcommittee. That policy refers to the Circular as one of the documents relied upon as a source of authority.
- 4.24 The Credentials Committee that carried out the process in relation to Dr Reeves did not include a fellow of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists on the Credentials Committee (as it is now known). Dr Simonson, who was one of its members, was credentialed to provide obstetric services at both Pambula and Bega District Hospitals. In my view, the Credentials Committee should have included a fellow of the relevant College. I discuss this issue and my recommendation as to the composition of Credentials Committees in Chapter 7.
- 4.25 *The Process of Appointing Visiting Practitioners* provided that the clinical privileges granted to an appointee should be based upon:
- The qualifications and experience required for the position;
 - The individual's curriculum vitae, post-graduate qualifications or college fellowship and a log of procedures or treatments, where relevant;
 - Evidence of maintaining continuing medical education where appropriate and experience and competence in the performance of specific procedures or treatments; and
 - Supervised assessment, where appropriate;
 - Availability, commitment and a reasonable ability to attend the hospital;
 - The delineated role of the hospital, the designed services provided, infrastructure support and the needs of the community for a given service.

- 4.26 There was no express requirement for documentation to be placed before the members of the Credentials Committee. However, the requirement that the credentialing process be based upon factors such as the qualifications and experience required for the position, the individual's curriculum vitae and post-graduate qualifications obviously imported a requirement that the members of the committee peruse and consider supporting material, such as the curriculum vitae. There was no requirement that referee reports be carried out before the Credentials Committee met.
- 4.27 The practice relating to the distribution of documentation in 2002 was described above in Chapter 3. Dr Arthurson gave evidence that, apart from the chairperson, the members of the Credentials Committee did not generally receive all the documentation submitted by applicants because of the logistics of distribution.¹⁴³
- 4.28 It is clear from the minutes of the Credentials Committee and the evidence of Dr Mortimer that the Committee members relied on the oral summary given by Dr Mortimer of Dr Reeves' application for the position, including the conditions on his registration, rather than their own individual assessments of his application. Absent any other information, it seems that weight was predominantly given to the fact that Dr Reeves held a Fellowship of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists and so was thought to be a fully qualified specialist in the discipline relevant to the position. This resulted in Dr Reeves being granted clinical privileges in obstetrics and gynaecology despite his conditional registration.
- 4.29 The present practice is to distribute all the supporting documentation, meaning the Director of Medical Services distributes a large bundle of paper every month to committee members.¹⁴⁴
- 4.30 In my view it is an essential component of effective decision-making for members of a Credentials Committee to be provided with a complete set of the candidates' application documentation. The purpose of decision-making by committee is to bring many points of view, and a range of expertise, to bear on the decision-making. Of course, small committees can sometimes make decisions that none of the individuals acting alone would make, given the same information. This can stem from behavioural factors such as the diffusion of responsibility and the potential for issues to be less thoroughly evaluated. There are no doubt other behavioural factors that may detrimentally affect the quality of decision-making in small groups. However I do not think that there is any doubt that a prerequisite to good decision-making in a Credentials Committee is that each member of the committee be given the written material upon which the decision is to be made.
- 4.31 I discuss in Chapter 7 my recommendations relating to the credentialing process and the composition of the Credentials Committee.

Appointments process

- 4.32 In 2002, the Southern Area Health Service by-laws required that the Medical and Dental Appointments Advisory Committee provide written advice and, where appropriate, make written recommendations with reasons to the Board concerning any matter relating to the appointment or proposed appointment of Visiting Practitioners.¹⁴⁵
- 4.33 The by-laws and *The Process of Appointing Visiting Practitioners* required all applications for appointment as a visiting practitioner to be referred for advice to the appointments committee, except for temporary appointments of less than 3 months.

- 4.34 The by-laws required that the Medical and Dental Appointments Advisory Committee be composed of:
- 2 members of the board (at least one of whom was not a medical practitioner and one of whom was chairperson of the appointments committee);
 - 2 representatives of the area medical staff council or area medical staff executive council, the Director of Medical Services or representative; and
 - such of the following persons as necessary in the Board's opinion:
 - one representative of the local facility;
 - one representative of an appropriate professional college or body whose discipline was relevant to the matter under consideration; and
 - one representative of any University, medical or dental facility as appropriate, affiliated with the local health facility.¹⁴⁶

Those requirements appear to have been met.

- 4.35 In my view, the Medical and Dental Appointments Advisory Committee should have included a fellow of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists. I discuss this issue and my recommendation as to the composition of Appointments Committees in Chapter 7.

- 4.36 The Department of Health's *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct* provided that at the time of interview, the health service should discuss with an applicant its right to contact previous employers and/or seek consent to contact an applicant's current employer.

- 4.37 That policy also:
- required Health Services to request written authorisation from registered health professionals to obtain relevant information from the HCCC and registration authorities, including any conditions placed on practice, the nature of any outstanding complaints or pending disciplinary action against the applicant;
 - required recommended applicants who are registered health professionals to produce proof of current registration, including any conditions on registration;
 - required all applicants for positions in the NSW Health Service to provide, at the time of application, at least two referees who could be contacted after the interview;
 - highlighted that a structured approach should be adopted with respect to reference checking, including asking referees specific questions;
 - required the health service to provide the appointee with a copy of the Southern Area Health Service Code of Conduct at the time of appointment.

- 4.38 The Southern Area Health Service obtained Dr Reeves written authorisation to obtain such information as may be required about his past experience and performance as a medical practitioner. There is, however, no record of any discussion during the interview relating to contact by the health service with Dr Reeves' past or current employers.

- 4.39 There is no evidence that the Area Health Service contacted any of Dr Reeves' previous employers or the hospitals shown on his curriculum vitae under the heading "current appointments" to seek information about his past performance or disciplinary history, except insofar as one of his referees was a colleague at Hornsby Ku-ring-gai Hospital.

- 4.40 There is no reference in the files to the formulation of any specific questions by the Medical and Dental Appointments Advisory Committee or by the Director of Medical Services, or Deputy Director of Medical Services, for referee checking.
- 4.41 There is no evidence that Dr Reeves was provided with a copy of any Code of Conduct at the time of appointment.
- 4.42 With regard to the adoption of the recommendation of the Medical and Dental Appointments Advisory Committee, Dr Robinson gave evidence that it was the Board's practice to rely on the minutes of the Medical and Dental Appointments Advisory Committee as constituting the written advice and recommendations to the board from that committee.¹⁴⁷ Dr Robinson testified that the minutes would have been circulated to all the board members before the board meeting on 12 April 2002.¹⁴⁸
- 4.43 Dr Robinson does not recall any discussion about the appointment at the board meeting. Dr Robinson does not recall the board being advised in respect of any recommended appointment that favourable referee reports had been obtained.¹⁴⁹ I have discussed more fully what occurred at the board meeting in Chapter 3.
- 4.44 I discuss in Chapter 7 my recommendations relating to the appointments process with regard to visiting medical officers.

Checking registration status

- 4.45 In 2002, there was no policy or legislative requirement to verify independently an applicant's registration status with the Medical Board.
- 4.46 Having heard the examination of the Director of Medical Services, the Deputy Director of Medical Services and the former Chief Executive Officer of the former Southern Area Health Service, I am satisfied that, in 2002, it was not the practice to conduct an independent check with the Medical Board of an applicant's registration status before making an appointment.¹⁵⁰ It was, however, practice to require proof of registration from the applicant. It seems that this was generally done by receiving a photocopy of the medical practitioner's registration card or a copy of a letter of renewal of registration from the Medical Board to the medical practitioners in question.
- 4.47 In the event that the applicant's registration was shown to be conditional, it was the practice for the Area Health Service to contact the Medical Board to request a list of the conditions. The Registrar of the Medical Board gave evidence that in 2002 many prospective employers contacted the Medical Board for this purpose and that the Medical Board regularly answered questions about doctors' registration.¹⁵¹ The real question is whether the Medical Board would have revealed, to a person requesting a list of any conditions attaching to the registration of a medical practitioner, an order of the type attaching to Dr Reeves' registration banning him from obstetrics. I address that issue in Chapter 6.
- 4.48 In my view, a preliminary question, given the particular circumstances of Dr Reeves' disclosure about his conditional registration, is whether the Area Health Service acted inappropriately, despite the absence of a policy requirement that it verify registration status with the Medical Board, when it failed to contact the Medical Board to verify the conditions attaching to Dr Reeves' registration.
- 4.49 The evidence of the relevant employees and officers of the Southern Area Health was that, when it came to Dr Reeves' application for appointment, there was not a sufficient reason to contact the Medical Board because the totality of the conditions were thought

to be contained in the letter from the Medical Board dated 27 December 2001 addressed to Dr Reeves.¹⁵² Dr Arthurson stated that he was not prompted to contact the Medical Board because the letter, which Dr Reeves had provided, appeared to be the most contemporary and complete account of Dr Reeves' registration status.¹⁵³ Dr Mortimer gave evidence to similar effect.¹⁵⁴ Dr Arthurson noted that Dr Reeves appeared to be forward and forthcoming with the information about his impaired status.¹⁵⁵

- 4.50 In my view, this was a reasonable interpretation of the letter of 27 December 2001. I consider that the context in which Dr Reeves volunteered the information about his conditional status reinforced the reasonableness of Dr Arthurson's belief. In February 2002 when Dr Arthurson received the Medical Board's letter, it was recent and it would not have been unreasonable to assume that it was up to date. It advised that:

your registration is now subject to the following conditions:

The letter provided categories of conditions, including relating to "health", "monitoring" and "employment". In my view, the existence of the term and category "employment-related conditions" suggested that the totality of conditions relating to restrictions on the right to practice as a medical practitioner were listed. Further, Condition 8 stated:

The extent of my professional medical duties is to be guided by my health status and the advice of my treating & Board-nominated practitioners

Although inelegantly expressed, the effect of the condition was that the extent of Dr Reeves' professional duties was restricted only by his health status and the advice of his treating and Board-appointed practitioners, rather than by any other order.

- 4.51 I have also noted that the letter refers to the Medical Board's obligation under section 191B of the *Medical Practice Act* to give notice of any orders made under the Act to current employers of the medical practitioner and any organisation where the practitioner is a visiting medical officer, and other specified persons. A copy of the correspondence providing that notice is said to be attached to the letter. Although it does not appear that Dr Reeves provided those enclosures to the Southern Area Health Service, the letters contained in the Medical Board files show that the enclosed correspondence set out the same conditions as those contained in the letter to Dr Reeves. There may be an inference available that, had Dr Arthurson or Dr Mortimer telephoned the Medical Board as a prospective employer, they would not have been provided with information that was any more comprehensive than that required to be provided to the current employer.
- 4.52 In Chapter 6, I consider whether or not a person who requested from the Medical Board information about the conditional registration of a practitioner in 2002 would have been provided with the totality of any conditions as well as the information that was publicly available from the Medical Board in 2002.

Checking past performance and referee reports

- 4.53 In 2002, the practice was for the medical administrator within the Southern Area Health Service with responsibility for the relevant hospital to carry out referee checks and make notes to be included in the central file.¹⁵⁶ In the case of Pambula and Bega District Hospital, this person was Dr Mortimer.

- 4.54 Dr Arthurson stated that he expected to be advised about any unexpected or adverse referee reports and, in his absence, that Dr Robinson would be advised.¹⁵⁷ Given Dr Mortimer's previous conscientiousness in the matter of appointments processes, Dr Arthurson did not think it necessary to say specifically to Dr Mortimer that he should notify him of any adverse referee report.¹⁵⁸
- 4.55 Dr Robinson also gave evidence that she would have expected to be advised about the report Dr Mortimer had obtained from Dr Garrity.¹⁵⁹ Dr Robinson said that there was an expectation that the Board would be advised, or the Board meeting deferred, where there was an unfavourable referee report.¹⁶⁰ It was not imperative that the Board sign off on any particular appointment at the meeting directly following the recommendation being made by the appointments committee.¹⁶¹
- 4.56 No guidelines were given to the person speaking to a referee for the purpose of obtaining a report about an appointment about how to judge the content of a referee report. Nor were there guidelines or requirements regarding the distribution of referee reports. I consider this issue further in Chapter 7.
- 4.57 In my view, the referee report of Dr Garrity noted by Dr Mortimer was not necessarily unfavourable. With the benefit of hindsight, one can see that the report contained warning signs, not only about the limitations on Dr Reeves' right to practise medicine ("not meant to do obstetrics"), but also about his poor disciplinary history at Hornsby Kuring-gai Hospital ("dispensed with services" and "few arguments with nursing staff and junior registrars"). The statement that he was not meant to do obstetrics was open to more than one interpretation given Dr Mortimer's knowledge about his depressive illness. The comment about arguments with nursing staff and junior staff (assuming they were faithfully recorded) did not accurately convey the extent of Dr Reeves' problems at Hornsby. Assuming those comments were accurately recorded, they may have warranted clarification. However, in my view, in light of the information Dr Mortimer already had about Dr Reeves' condition, the way in which Dr Reeves had behaved in the interview and the other positive comments made to him about Dr Reeves, Dr Mortimer's interpretation of Dr Garrity's comments, set out at paragraph 3.82 above, was entirely understandable and not unreasonable.
- 4.58 The applicable policy did not stipulate a minimum number of references checks. However it suggested that 2 were required. It would have been good practice for Dr Mortimer to carry out 2 such checks.
- 4.59 The practice at the time was that referee's reports were only obtained after the preferred candidate had been selected. It is hard to see why, after an applicant has been selected, a referee's report is helpful. Referees reports are generally positive. Occasionally they may be neutral. The real benefit of a referee check is not to explore whether the referee would recommend the person for the job but rather to seek the referee's views about the experience and practical capacity of the applicant for the job. A referee report would be more helpful at an earlier stage in that process.
- 4.60 Referees are nominated by the candidate and can generally be expected to provide favourable comments about the person. In my view there needs to be an ability to learn about the applicant's past performance from other sources. Dr Robinson mentioned in her evidence that candidates often request that any referee report only be sought once it is decided that he or she is the preferred candidate. This is because referees generally work for the applicant's present employer and the applicant does not wish the employer to know that he or she is considering leaving the present position. Current NSW health policy, which also applied in 2002, requires that the applicant's consent be sought before contacting a current employer.¹⁶²

- 4.61 Dr Reeves authorised the Southern Area Health Service to seek information about his past experience and performance as a medical practitioner. No request was made to the Hornsby Ku-ring-gai Hospital for information about Dr Reeves, or for a copy of his personnel file. It was not the practice to obtain such information about a visiting medical officer in 2002 and it is still not the practice.¹⁶³ Information about his extensive disciplinary history at Hornsby Ku-ring-gai Hospital would have undoubtedly led to a situation where the Area Health Service was apprised of facts relevant to Dr Reeves' application, and at the least, have given rise to a likely further train of enquiry.

Job descriptions and advertisements

- 4.62 *The Process of Appointing Visiting Practitioners* required that essential and desirable criteria be determined and documented prior to the position being advertised. Essential criteria included (among other criteria):

- Current NSW medical registration
- Current re-certification statement or certificate from a relevant College or Association, where that College or Association conducts a re-certification program
- For those practitioners whose College does not conduct a re-certification program, evidence of participation in Continuing Medical Education (CME) relevant to the areas of intended clinical practice (e.g. emergency medicine, obstetrics, anaesthetics etc.)
- Medical indemnity coverage
- Ability to communicate effectively

- 4.63 There is no evidence that that information was documented in respect of the position that Dr Reeves obtained. The essential and desirable criteria were not provided to Dr Reeves, or to the members of the Credentials or the Medical and Dental Appointments Advisory Committee.
- 4.64 It appears also that there was no position description for the appointment sought and obtained by Dr Reeves. There was, however, an advertisement which specifically sought expressions of interest from "specialist obstetricians and gynaecologists". Had Dr Reeves been provided with a position description, his argument that he applied only for a position in gynaecology could not have been sustained. In my view, position descriptions are essential for every advertised position. It would also be useful for advertisements to contain a reference to where the position description and the essential and desirable criteria, particularly with regard to the specialist qualifications and experience required for the position, can be obtained on request.
- 4.65 The current NSW Health policy relating to the appointment of visiting practitioners requires position criteria to be determined and provided to potential applicants as well as any interviewing and appointments committees.¹⁶⁴ It also states that an information package should include an appointment description describing the nature and scope of the appointment. Dr Mortimer gave evidence that the practice today with respect to job descriptions is nevertheless very variable.¹⁶⁵ He stated that positions descriptions are not routinely provided to the members of Credentials Committees and that sometimes members of those Committees are not sure of the scope of the position that was advertised. Dr Mortimer gave evidence that advertisements do not always indicate the availability of position descriptions, showing the essential and desirable criteria.¹⁶⁶ If this is the case, it is a matter of real concern.

Criminal record check

- 4.66 Dr Reeves signed and provided to the Southern Area Health Service a form consenting to the carrying out of a criminal record check.
- 4.67 A typographical error resulted in the Area Health Service operator electronically lodging a request to the Department of Health, in March 2002, for a check to be conducted in the name of Beeves rather than Reeves. The Department transferred this request by data file to NSW Police and on the same day received a response showing a clean bill. The result was relayed to the Area Health Service by email dated 19 March 2002 to the effect that there had been a clear criminal record check for "Graeme Beeves".
- 4.68 The Department of Health has confirmed to the Inquiry that, although the above attempt was made, no criminal record check was properly conducted on the name Graeme Reeves in 2002. Assuming it had been carried out, it would have yielded a clean result.¹⁶⁷
- 4.69 The undertaking of a criminal record check is a necessary step in recruiting and ought always to be done with diligence, and attended to in detail. The type of confusion which the files here record must be clarified and documented in every case before an appointment is made.

Temporary appointment

- 4.70 In April 2002, the Southern Area Health Service by-laws permitted the Director of Medical Services to exercise the board's power to appoint a visiting practitioner for a period not exceeding three months, subject to any exercise of that delegation being considered at the next succeeding meeting of the board, and subject to the advice of the Medical Appointments Advisory Committee.
- 4.71 *The Process of Appointing Visiting Medical Practitioners* set forth procedures for temporary appointments. It stated that:
- The temporary appointment of a visiting practitioner is subject to:
- qualifications and experience...
 - referee reports;
 - an appropriate credentialling procedure being carried out;
 - the vetting of the applicant, including criminal record check;
 - a written agreement between the public health organisation and the visiting practitioner [with regard to conditions of employment, responsibilities and clinical privileges].
- 4.72 By the time of his temporary appointment, Dr Reeves had gone through the first 2 stages of the appointment process for the substantive position, that is the credentialing process, which took place on 26 March 2002, and the appointment process, which took place on 2 April 2002. The referee report obtained by Dr Mortimer in relation to the permanent position was not carried out until 11 April 2002, which was after Dr Arthurson approved Dr Reeves' temporary appointment in his letter dated 10 April 2002. Considering the temporary appointment from this chronological

perspective, it is clear that the temporary appointment came about regardless of the referee report.

- 4.73 Dr Arthurson gave evidence that in making the temporary appointment, he took into account the fact that Dr Reeves' application had been through the Credentials Committee and the Medical and Dental Appointments Advisory Committee.¹⁶⁸ Dr Arthurson said that the information available to him when he made the temporary appointment was the information submitted by Dr Reeves in support of his application for the permanent appointment. At the time, Dr Arthurson considered the information before him to be sufficient.¹⁶⁹
- 4.74 According to the local policy, there was a requirement for referees' reports to be obtained prior to a temporary appointment, even where an appointment was anticipated. It is not possible to know what course of events would have transpired had Dr Arthurson sought referee reports prior to the temporary appointment. Dr Arthurson submitted that he had no reason to suspect that the Credentials Committee or appointments committee had failed properly to consider Dr Reeves' application for the substantive position and that good practice did not create an independent need for him to obtain referee reports in relation to the temporary appointment.
- 4.75 Dr Arthurson's explanation is not unreasonable. It is also relevant that the local policy requiring referee checks for temporary appointments had not been formally endorsed by the board of the Southern Area Health Service. No Department of Health policy clearly required such checks for temporary appointments of visiting practitioners. The NSW Health policy requiring referee checks during the recruitment of employees did not apply to temporary appointments of less than 13 weeks.¹⁷⁰

¹³¹ Transcript 170.14; transcript 205.4 (Dr Mortimer).

¹³² Transcript 203.16 to 204.2 (Dr Mortimer).

¹³³ Transcript 326.39 (Dr Robinson).

¹³⁴ The Department of Health informed this Inquiry that compliance with circulars was mandatory in 2002 by reason of the Account and Audit Determination, being a determination of the Director-General, as delegate of the Minister, in exercise of the power under section 127(4) of the *Health Services Act*. That Determination makes the payment of subsidies to public health organisations under section 127 of the *Health Services Act 1997* conditional on compliance with the Determination. The Determination provides that the Board of Directors and Chief Executive Officer of public health organisations, a term which includes an area health service, are responsible to ensure the observance of circulars issued by the Minister, the Director-General and the Department of Health. It is these provisions which are said to form the legal basis for the mandatory nature of circulars issued in 2002. Circular 2001/12, applying in 2002, states that all circulars are "policy", meaning that they contain material that is expected to be known by relevant staff and implemented by the NSW public sector health system.

¹³⁵ PD2005_010.

¹³⁶ PD2006_059 *Recruitment and Selection Policy and Business Processes - NSW Health Service*.

¹³⁷ PD2005_013.

¹³⁸ PD2005_109.

¹³⁹ PD2008_029 - *Employment Screening Policy*; some of its requirements were also replaced by PD2006_025 - *Child Related Allegations, Charges and Convictions against Employees* and PD2006_026 - *Criminal Allegations, Charges and Convictions Against Employees*.

¹⁴⁰ PD2005_177.

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- ¹⁴¹ PD2008_029, *Employment Screening Policy*.
- ¹⁴² *The Process of Appointing Visiting Practitioners* (June 2001).
- ¹⁴³ Transcript 232.3 (Dr Arthurson).
- ¹⁴⁴ Transcript 232.3 (Dr Arthurson).
- ¹⁴⁵ By-law 51(a).
- ¹⁴⁶ By-law 52.
- ¹⁴⁷ Transcript 322.18 (Dr Robinson).
- ¹⁴⁸ Transcript 322.22 (Dr Robinson).
- ¹⁴⁹ Transcript 323.12 (Dr Robinson).
- ¹⁵⁰ Transcript 305.17 (Dr Robinson).
- ¹⁵¹ Transcript 2.43 (Andrew Dix).
- ¹⁵² Transcript 180 (Dr Mortimer); transcript 228.44 (Dr Arthurson).
- ¹⁵³ Transcript 228.44 (Dr Arthurson).
- ¹⁵⁴ Transcript 180.5 (Dr Mortimer).
- ¹⁵⁵ Transcript 229.4 (Dr Arthurson).
- ¹⁵⁶ Transcript 256.36 (Dr Arthurson).
- ¹⁵⁷ Transcript 256.36 (Dr Arthurson).
- ¹⁵⁸ Transcript 257.7 (Dr Arthurson).
- ¹⁵⁹ Transcript 318.43 (Dr Robinson).
- ¹⁶⁰ Transcript 320.47 (Dr Robinson).
- ¹⁶¹ Transcript 320.47 (Dr Robinson).
- ¹⁶² *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct* PD 2005_109, Circular 97/80.
- ¹⁶³ Transcript 258.27 (Dr Arthurson).
- ¹⁶⁴ Page 18, *Appointment of visiting practitioners: Policy for Implementation*, PD2005_496.
- ¹⁶⁵ Transcript 204 (Dr Mortimer).
- ¹⁶⁶ Transcript 205.39 (Dr Mortimer).
- ¹⁶⁷ A criminal record check dated 4 June 2008 shows no disclosable court outcomes or outstanding matters recorded against the name of Graeme Stephen Reeves within the records of the NSW Police Force.
- ¹⁶⁸ Transcript 236.18 (Dr Arthurson).
- ¹⁶⁹ Transcript 238.17 (Dr Arthurson).
- ¹⁷⁰ *A Framework for Recruitment and Selection* (NSW Health Circular 2001/74 – issued on 8 August 2001).

5 Discovery of Obstetrics Ban

Breaches of the order by Dr Reeves	60
Provision of obstetric services by Dr Reeves	60
Agreement to join a roster for caesarean sections.....	63
Intervention by a registered medical practitioner in an emergency situation .	64
Tensions between Dr Reeves and nursing staff.....	65
Discovery of obstetrics ban by Area Health Service	67
Telephone call to the Medical Board on 31 October 2002	67
Further conversation with Medical Board on 13 November 2002	67
Clarification on 14 November 2002	68
Response of the Area Health Service	69
Initial response	69
Correspondence between the Medical Board and Dr Reeves	70
Further breaches by Dr Reeves: December 2002.....	71
Further breaches by Dr Reeves: January 2003	72
Communication with Dr Reeves and staff	73
Section 66 Inquiry at the Medical Board.....	74
Steps prior to Section 66 Inquiry	74
Purpose of Section 66 Inquiry	75
Outcome of Section 66 Inquiry	75
Events after the Section 66 Inquiry: termination of appointment and de- registration.....	77

Breaches of the order by Dr Reeves

Provision of obstetric services by Dr Reeves

5.1 Between 10 May 2002 and 13 November 2002, Dr Reeves engaged in the clinical practice of obstetrics 32 times in Bega and Pambula District Hospitals.¹⁷¹ The first occasion that he provided obstetric services was 10 May 2002. He admitted in the Medical Tribunal that when he was called upon on that occasion, he did not inform his employer that he could not perform the work legally.¹⁷²

5.2 Dr Reeves also provided obstetric services on 9 December 2002, 20 December 2002, 3 January 2003, 8 January and 9 January 2003. These services were provided after the Area Health Service had learned about the existence of the order of the Professional Standards Committee banning him from the practice of obstetrics. This was also after the Medical Board of New South Wales had discovered that Dr Reeves had practised medicine in breach of that order.

5.3 It will be recalled that Dr Reeves said that he only ever accepted a job as gynaecologist.¹⁷³ When questioned about this, he said that his provision of obstetric services during the course of his appointment with the Southern Area Health Service was outside his clinical privileges, which he understood to be limited to gynaecology.¹⁷⁴ He sought to justify his actions by saying that he was entitled, indeed obliged, to provide obstetric services in emergency situations as well as situations where there was no other practitioner available.¹⁷⁵

I found myself in a quandary because I believed when the GPs asked me to do a caesarean section for a patient where they had no-one else to do it, I believed I was obliged to do so.¹⁷⁶

5.4 He attributed the non-availability of a surgeon to perform caesarean sections to Dr Simonson's absence from work for a period of time in 2002.¹⁷⁷

5.5 Dr Reeves said that when he told Dr Mortimer at their initial meeting in late 2001 or early 2002 that he was prepared to provide obstetric back-up for GP obstetricians in emergencies, he believed that this accorded with his obligations as a medical practitioner to assist in emergencies or where there was no other practitioner available.

I understood that the requirement under the Medical Practitioners Act was that if there was no-one else able to provide the service and you were required to do so in an emergency, you had to provide that. That was overriding all other circumstances.¹⁷⁸

5.6 Dr Reeves acknowledged that it had been explained to him during one of his review interviews at the Medical Board, before 2002, that he could only undertake obstetrics in a real emergency such as where someone fell down in a street or something happened on plane. The interviewer on behalf of the Medical Board was Dr Amos. Dr Reeves said that Dr Amos' recollection of their conversation as recorded in a statement of 18 May 2004 accurately reflected the conversation.¹⁷⁹ Dr Amos made a statement in the following relevant terms:

1. ...
2. I was appointed by the Board to conduct three interviews of Dr Graeme Reeves in accordance with the conditions on his registration.

3. I have been provided with a copy of the Review Interview Reports dated 23 August 1999, 17 August 2000 and 23 August 2001. The reports refer to the review interviews conducted by myself and another Board-appointed reviewer and reflect my recollection of the interviews conducted on these dates.
4. At the time of conducting the review interviews I was aware that Dr Reeves had a number of conditions imposed on his registration by a Professional Standards Committee in 1997 including a prohibition on the practice of obstetrics and health-related conditions.
5. ...
6. The review interviews concerned Dr Reeves's participation in the Impaired Registrants Program and his compliance with his conditions and orders.
7. At the interviews Dr Reeves sought clarification of the orders imposed by the 1997 Committee and his health conditions. At the review interview on 29 September 2000 conducted by me with Mr Robert Kelly, Deputy President of the Board, I confirmed that there was no change to the orders on his practice as it was not within the powers of the review to do so.
8. In answer to his question if he could practise obstetrics in an emergency setting I said "in an emergency such as if someone falls down in the street or if something happens in a plane, you can assist."
9. I did not tell Dr Reeves that he could practise obstetrics.

- 5.7 That type of emergency was also referred to in Dr Arthurson's letter of 17 April 2002 advising Dr Reeves that his appointment to the permanent position had been approved by the Board of the Area Health Service. It will be recalled that that letter referred to Dr Reeves' clinical privileges in obstetrics and gynaecology. It also contained the following statement:

The above clinical privileges relate to the non-emergency situation. In a dire emergency situation (immediate life or limb threatening clinical situation) each registered medical practitioner has a duty of care to do clinically and organisationally whatever may be necessary to reduce the risk to the patient of death or major morbidity. Such action must be based on the medical practitioner's judgement of the demands of the clinical situation and their own medical skills and ability and take into account the availability of other courses of action. Therefore, in the circumstances of a dire emergency the Health Service recognises that you may decide to carry out procedures which are outside the range of the clinical privileges granted above.

- 5.8 Dr Arthurson gave evidence that, although it is exceedingly uncommon that a doctor is required to carry out procedures in a dire emergency of the kind referred to in his letter, reference to the obligation was included as a consequence of discussions held with VMOs. This was principally so that doctors who were compelled on occasions to

perform services outside their clinical privileges within the hospital setting were not criticised for doing so.¹⁸⁰

- 5.9 Dr Reeves stated that at the time of the relevant events in 2002 his understanding of emergency was different to that of “everybody else”.¹⁸¹ I do not accept this explanation. By 2002, it was abundantly clear to Dr Reeves that the type of incident to which Dr Amos had referred in his interview of 29 September 2000 and to which Dr Arthurson had referred in his letter were not the same as providing obstetric services in the Bega Valley in the way he agreed to. I regard this explanation as an invention by Dr Reeves to attempt to justify his conduct.
- 5.10 When the Medical Tribunal in 2004 dealt with complaints against Dr Reeves, he gave evidence that out of the total of 32 obstetric services that he provided before 13 November 2002, only 11 were emergencies. In his evidence to the Inquiry, Dr Reeves stated that, in giving that evidence in the Medical Tribunal, he does not recall whether he was relying on his recollection of the actual events or a notation he had made in 2002 on pay claim sheets he had submitted to his employer for payment under his Fee-For-Service Contract.¹⁸² Those sheets contained a column headed “emergency” and required the practitioner to indicate either “yes” or “no” next to the name of the patient and the description of the service provided.
- 5.11 Dr Reeves said that the notations on the pay claim sheets as to whether a case was an emergency or not did not signify whether or not the case was an actual emergency.¹⁸³ Rather, according to Dr Reeves, he had been told that the hospital administration required such notations to be made so as to determine how to pay the nursing staff.¹⁸⁴ It related to the hours worked by the nursing staff in the operating theatre, that is, whether the staff were on duty (a non-emergency, to be indicated by “no” on the sheet) or had to be called in to carry out the case (which was an emergency and noted by “yes”). This allowed the hospital administration to check the payment claim made by nurses against the doctor’s own record.¹⁸⁵
- 5.12 This explanation was not immediately intelligible. Mr Toft said that he was not familiar with the form, although he had seen various forms used by doctors over the years for claiming payment.¹⁸⁶ He agreed that nurses were paid a different rate if they were called back. However the nurses filled out their own time sheets on which they indicated whether or not they did overtime or were called back. Mr Toft said that there was no need to have recourse to the records filled out by the medical officer to work out how the nurses should be paid¹⁸⁷ and that he had never explained the form to Dr Reeves.¹⁸⁸ Mr Toft said that the form had nothing to do with the pay rates for nurses.
- 5.13 The Inquiry has obtained the clinical notes for all the obstetrics patients treated by Dr Reeves in 2002 and 2003. Having examined Dr Reeves, I determined that it was not necessary to resolve the issue as to whether the obstetric services provided by Dr Reeves were emergencies or not. What is important is that Dr Reeves admitted that:
- during 2002 he performed a number of non-emergency obstetric services at both Pambula and Bega District Hospitals;¹⁸⁹
 - he performed caesarean sections, not in situations of ‘dire emergency’, but where he says that he believed that there was no other practitioner available;¹⁹⁰ and
 - shortly after he commenced duty, he agreed to join a roster to perform lower segment caesarean sections which, by their nature, would not be emergencies of the kind described as “dire emergencies”. I discuss this further below.
- 5.14 Even assuming that there was no other practitioner available at either Bega or Pambula District Hospitals to perform obstetric services, Dr Reeves was aware that the patients to whom he provided obstetric services could have been transported to The Canberra

Hospital for alternative treatment.¹⁹¹ Of course, it is really beside the point whether or not there was another practitioner available because Dr Reeves was not entitled to decide for himself whether or not he would practise obstetrics. He was the subject of an order banning him from obstetric practice and was not legally permitted to act inconsistently with that order.

- 5.15 Dr Reeves' first obligation, even assuming that he was presented with situations where there was no other practitioner available to perform an obstetric service, was to disclose the existence of the order to his employer, colleagues and the patient. Such a disclosure would have undoubtedly prevented any further situations arising in which he was called upon to provide obstetric services. His stated justification for providing a succession of obstetric services between May 2002 and 9 January 2003 is entirely disingenuous.

Agreement to join a roster for caesarean sections

- 5.16 Any question about whether Dr Reeves performed emergency or non-emergency obstetrics in the course of his appointment, and whether the provision of obstetric services was justified where no other practitioner was available, is settled by what occurred shortly after he commenced duty. On 14 May 2002, Dr Reeves attended a meeting of the Medical Staff Council at Bega District Hospital. This was only a month after Dr Reeves' letter to the Medical Board informing it about his new position and stating that he would not be doing any obstetrics. The minutes note:

Graham Reeves (new O&G Specialist VMO) was welcomed by the Chairman.

Specialist Gynaecologist Graham Reeves operating weekly at Pambula currently. Is on call for consultation obstetrics if required and will contribute to caesarean section roster.

- 5.17 The roster referred to was a roster of doctors who were credentialed to perform caesarean sections at Bega District Hospital. It included Dr Simonson, another general practitioner visiting medical officer, and one general surgeon.¹⁹² It was for all non-elective caesareans indicated between the hours for which the doctor was rostered.
- 5.18 Dr Reeves stated that it was an emergency roster and that when he was approached to join the roster he was told that it was "for emergencies only".¹⁹³ However he agreed that there was no expectation that all of the cases arising under the roster would be emergencies as it extended to any "unbooked" caesarean sections that arose.¹⁹⁴ He also agreed that the roster was not limited to Dr Simonson's patients.¹⁹⁵
- 5.19 It was common for the GP obstetrician to assist the doctor who was called on the roster to perform the caesarean section.¹⁹⁶ Dr Reeves acted as assistant surgeon at caesarean sections and was himself provided with such assistance when he performed caesarean sections as the primary surgeon on several occasions between June 2002 and 8 January 2003.¹⁹⁷ Dr Reeves stated that he did not go on to the roster until he was approached.¹⁹⁸ I do not think, even if this is true, that this is a relevant circumstance. The fact is that being approached to join a roster to perform caesarean sections provided Dr Reeves with an opportunity to disclose that he was precluded from doing so. At the very least, he could have informed the meeting that he was unwilling to take on obstetric cases.

- 5.20 Putting oneself on a roster for the management of obstetric patients in a hospital where one does not have the skill or requisite qualification to do so is a very different proposition to providing urgent medical attention in unexpected and unforeseen circumstances, which might be regarded as dire emergencies.

Intervention by a registered medical practitioner in an emergency situation

- 5.21 The legislature of New South Wales has enunciated a clear statement of public policy in respect of the obligation of a registered medical practitioner in relation to a person in need of urgent treatment. That obligation is contained in section 36(1)(l) of the *Medical Practice Act* as part of the definition of unsatisfactory professional conduct:

For the purposes of this Act, unsatisfactory professional conduct of a registered medical practitioner includes each of the following:

...

- (1) Failing to render urgent attention

Refusing or failing, without reasonable cause, to attend (within a reasonable time after being requested to do so) on a person for the purpose of rendering professional services in the capacity of a registered medical practitioner in any case where the practitioner has reasonable cause to believe that the person is in need of urgent attention by a registered medical practitioner, unless the practitioner has taken all reasonable steps to ensure that another registered medical practitioner attends instead within a reasonable time.

- 5.22 For the purposes of the *Medical Practice Act*, “professional misconduct” means unsatisfactory professional conduct of a sufficiently serious nature to justify suspension of the practitioner from practising medicine or the removal of the practitioner’s name from the Register.
- 5.23 Situations may arise where a doctor who is prohibited, by reason of an order or condition imposed under the *Medical Practice Act*, to practise in a certain area, is called upon in an emergency context to render professional services of the kind he or she is prohibited from providing. Difficult questions may arise concerning the doctor’s obligation to provide such services, including whether or not the provision of those services constitutes the practice of the medical specialty in question. However, given all the circumstances pertaining to Dr Reeves’ conduct, it is not necessary for me to resolve that question. Given the circumstances which have been canvassed in this report, it would be timely for consideration to be given to whether the legislation ought be amended.
- 5.24 The essence of the advice given to Dr Reeves by Dr Amos during the Board Review interview at which Dr Reeves raised the issue of his obligation to practise obstetrics in an emergency situation was that such an obligation could only arise in a remote location or a completely unforeseen circumstance. Whatever the basis for that advice, which I do not pause to examine, it is clear that the occasions on which Dr Reeves provided obstetric services at Bega and Pambula District Hospitals did not arise in circumstances of the kind referred to by Dr Amos.

Tensions between Dr Reeves and nursing staff

- 5.25 Dr Reeves' professional conduct and clinical performance during the course of his appointment with the Southern Area Health Service were not without incident or complaint.
- 5.26 The Senior Nursing Manager, Mr Raymond Toft, gave evidence that there were a number of incidents involving Dr Reeves during the course of his appointment. It was Mr Toft's practice to record such incidents in reports, which he submitted to the General Manager, Ms Christine Dwyer. Mr Toft also made notes of his conversations and observations relating to Dr Reeves.¹⁹⁹ These notes as well as the incident reports were provided to the Inquiry and Mr Toft was examined about them.
- 5.27 Mr Toft also gave evidence that a concern had arisen in relation to Dr Reeves before October 2002 when the first incident report was prepared. One of the theatre staff had submitted a letter on 5 September 2002 stating that he was not happy to continue working with Dr Reeves in theatre due to the verbal abuse that he had received from him.²⁰⁰
- 5.28 The first incident report is dated 11 October 2002²⁰¹ and related to an ectopic pregnancy that became septic. That incident was reported by Mr Toft as an adverse post-operative outcome. Mr Toft does not recall if there was any criticism of Dr Reeves' clinical skills.
- 5.29 The next report is dated 25 October 2002 and relates to a suture needle being left *in situ* in a patient on 24 October 2002. The incident report notes that Ms Dwyer, Tony Robbins, the Health Service Manager at Bega District Hospital, and Dr Arthurson were notified of the incident and that Dr Arthurson and Mr Robbins spoke to Dr Reeves.
- 5.30 On 28 October 2002 Mr Toft was approached by staff with concerns about their relationships with Dr Reeves. Mr Toft's notes state that there were concerns regarding the clinical care of patients due to the breakdown in relationship between the staff and Dr Reeves. Mr Toft gave evidence that he was not able to contact Dr Reeves until early on 30 October 2002.²⁰² He raised his concerns with Dr Reeves. Mr Toft's notes record that Dr Reeves' response was that he had not done anything wrong and did not wish to speak with Mr Toft further at that time but that he wanted to work towards the resolution of the issues.
- 5.31 On 31 October 2002, an incident occurred during an operation being carried out by Dr Reeves at Pambula District Hospital. A nurse received a laceration by a contaminated scalpel being used by Dr Reeves. Mr Toft testified that the nurse in question left the operating theatre and attended the emergency department at the hospital. She then attended Mr Toft's office and told him what had happened.²⁰³
- 5.32 Mr Toft requested the support of Mr Robbins to manage the situation and also telephoned Dr Arthurson in Goulburn. Consideration was given to whether Dr Arthurson should come to Pambula from Goulburn but it was decided to manage the situation locally and to revert to Dr Arthurson later.²⁰⁴ Mr Toft gave evidence that it was a tense situation and that he gave the staff instructions to stay calm and professional and to follow Dr Reeves' instructions so that the operation could be completed.²⁰⁵
- 5.33 When the opportunity presented itself after the completion of the operation, Mr Toft and Mr Robbins discussed with Dr Reeves whether he should continue with the operating list. Mr Toft's notes record that Dr Reeves asked Mr Robbins to make the decision and that Mr Robbins refused to do so, with the result that Dr Reeves decided to continue with the list.

- 5.34 Mr Toft made a report about the incident and sent it to Ms Dwyer. Mr Toft recorded that various factors may have contributed to the tense atmosphere during the operation and that the laceration occurred when Dr Reeves was passing the instrument away from the operative field. Mr Toft's wrote:

Ongoing and escalating tense relationship between Dr Reaves and Nursing staff as a result of the rapid and disproportionate anger response by Dr Reeves to situations/problems. Staff have expressed they are so "on edge that they fear mistakes will occur".

Pambula Hospital nursing staff are becoming increasingly apprehensive at working with or approaching Dr Reeves over clinical issues.

Increase risk of poor patient outcomes due to lack of communication and inability to share information or ask questions of Dr Reeves.

- 5.35 Mr Toft's recommendation, as recorded in the report was that:

Dr Arthurson/Mortimer to continue to work with Dr Reaves (sic) to address his inappropriate anger response to issues.

Nursing management to address the identified issues re nursing staff.

- 5.36 Mr Toft said that he would have sent the report to his general manager, Ms Dwyer.²⁰⁶
- 5.37 Mr Toft gave evidence that Dr Reeves contacted him on 10:30am on 1 November 2002 and requested a meeting with the operating theatre staff.²⁰⁷ A meeting was arranged for 6 November.
- 5.38 On 6 November 2002 Mr Toft, Dr Arthurson and Maree Wetherstone from the Area Health Service met with the operating theatre staff. Mr Toft's notes indicate that during that meeting he stated that poor relationships between the surgeon and nursing staff could result in poor outcomes for patients. Part of Mr Toft's summary of the discussions during the meeting was that:

Concerns are not of GR's clinical ability but to improve communication so that issues related to patient care can be sorted out.

...

Staff unhappy with the way GR reacts to questions re patient care.

- 5.39 Mr Toft does not recall whose opinion he was recording in his notes.
- 5.40 Immediately after the meeting, Dr Arthurson, together with Mr Toft and Ms Wetherstone, met with Dr Reeves and raised with him the concerns about Dr Reeves' relationship with nursing staff at Pambula. Dr Reeves himself raised complaints about the nursing staff, specifically their competence and responsiveness in the operating theatre. Mr Toft's notes state that Dr Reeves indicated that he would "down tools" if things were not made "right".²⁰⁸

Discovery of obstetrics ban by Area Health Service

Telephone call to the Medical Board on 31 October 2002

- 5.41 Dr Arthurson was concerned about a deterioration in Dr Reeves' mental condition and wanted information from the Medical Board about how he might manage him. On 31 October 2002, Dr Arthurson rang the Medical Board. He was looking to make contact with someone who knew Dr Reeves' professional background and might be able to provide advice or direct him to one of Dr Reeves' medical supervisors.²⁰⁹ Dr Arthurson testified that it was not his intention to report Dr Reeves in the sense of making a complaint about him.
- 5.42 Dr Arthurson spoke to Kym Worth of the Medical Board. Ms Worth made a file note about their discussion in which she wrote:

I took a call from Dr Robert Arthurson, Director of Medical Services, Southern Area Health Service. He was phoning to seek advice from the Board on how to approach a potentially impaired doctor. He was aware that the doctor he was referring to had had problems in the past. He told me the doctor's name, and I advised him that the doctor has conditional registration, and of the employment related conditions.

Dr Arthurson made some comment regarding the Board giving him the name of a supervisor that Dr Reeves was required to report to, or something to that effect, but I told him that I was unable to discuss anything further with him without the doctor's consent. He made some comment at the end of the Conversation to the effect of hoping that his concerns were unfounded.

- 5.43 During his evidence, Dr Arthurson was taken through that file note and did not challenge its accuracy. He said that Ms Worth did not advise him of the specific limitation, being the order of the Professional Standards Committee, on Dr Reeves' obstetric practice.²¹⁰
- 5.44 It is clear from all of the evidence that Ms Worth disclosed to Dr Arthurson only the employment-related conditions set out in the letter of 27 December 2001.

Further conversation with Medical Board on 13 November 2002

- 5.45 Sometime in the week leading up to 13 November 2002, Dr Alison Reid, the Medical Director at the Medical Board, rang Dr Arthurson in relation to his phone call of 31 October 2002. Dr Reid did not speak to Dr Arthurson but left a message for him to return her telephone call.
- 5.46 On 13 November 2002 Dr Arthurson phoned Dr Reid back. Dr Reid told Dr Arthurson that there was an order prohibiting Reeves from practising obstetrics.²¹¹ This was the first occasion when Dr Arthurson, or anyone else at Southern Area Health Service, learnt of the order.
- 5.47 Dr Arthurson then spoke promptly to Dr Reeves about the information he had been given by Dr Reid. During that conversation, Dr Reeves undertook to stop practising obstetrics²¹² and indicated that he was making an application to the Medical Tribunal to vary the conditions on his registration.

- 5.48 Dr Arthurson's evidence was that when he spoke to Dr Reeves on 13 November 2002, Dr Reeves was on his way to do an emergency caesarean section. Dr Arthurson said that "he let that proceed"²¹³ because there was no provision for an alternative person to carry out the procedure. He also stated that he was not sure that Dr Reid was absolutely dogmatic about the restriction on Dr Reeves' right to practice and that, in his mind:

there was some doubt as to the true extent of the limitations on what he could do by way of emergency or non-emergency.²¹⁴

- 5.49 It appears that Dr Reeves told Dr Arthurson during their conversation on 13 November that he was allowed to practice obstetrics in an emergency and that this assertion was at least one source of Dr Arthurson's doubt.²¹⁵
- 5.50 After performing the operation, Dr Reeves drafted a letter to the Medical Board. This was in response to Dr Reid's telephone call. Mr Dix, the Registrar of the Medical Board had also sent Dr Reeves a facsimile that day requiring Dr Reeves urgently to advise of his current employment.
- 5.51 In his letter to Dr Reid, Dr Reeves assured Dr Reid that he had informed the Southern Area Health Service that he had conditional registration and stated:

My Practise (sic) is Specialist Gynaecological Services. ...I have maintained a Specialist Gynaecology practice since and refuse any Obstetric referral. During the last six months, I have been called on a couple of occasions to provide emergency help (Caesarean section for foetal distress) where no other practitioner was able to provide that service.

...

I have no intention of practising obstetrics again.

Clarification on 14 November 2002

- 5.52 On 14 November 2002, Dr Reid telephoned Dr Arthurson again. It seems from Dr Reid's file note of her conversations with Dr Arthurson of 13 and 14 November 2002 that, after speaking to Dr Arthurson initially on 13 November, she went away and checked Dr Reeves' paper file. After reviewing that file, as well as Dr Reeves' letter of 13 November 2002, and speaking with Mr Dix, Dr Reid telephoned Dr Arthurson.
- 5.53 During that conversation Dr Reid clarified with Dr Arthurson the true effect of the Medical Board's restriction²¹⁶ and undertook to confirm this in writing. Despite this conversation, Dr Arthurson gave evidence that he remained uncertain because Dr Reeves was making statements about what he believed the interpretation of emergency was.²¹⁷ Dr Arthurson no longer recalls the specific circumstances, however he recalls being of the view that, pending receipt of the letter from the Medical Board, immediate action would have to be taken to suspend Dr Reeves' obstetric privileges.²¹⁸
- 5.54 Mr Dix sent a facsimile to Dr Arthurson on 14 November 2002 clarifying that the only emergency work that Dr Reeves was entitled to engage in would be a dire emergency.

...Dr Reeves must not provide any clinical obstetric services or participate in any emergency or on-call obstetric roster. Like any medical practitioner, Dr Reeves may provide services in an emergency situation, such as may be encountered on a plane or in a remote setting. However, [this] does not extend to the provision of rostered emergency obstetric services.

- 5.55 The letter stated that the same information had been provided to Dr Reeves directly.
- 5.56 Dr Arthurson spoke with Dr Robinson and Dr Mortimer.²¹⁹ Dr Arthurson's recollection is that Dr Reeves indicated that he would comply with the order and that he intended to seek to have the Medical Board quickly review the conditions. Dr Arthurson gave evidence that he left management of the situation to Dr Mortimer.
- 5.57 Dr Arthurson does not recall whether he took any steps to bring to Dr Reeves' attention the fact that he was not entitled to practice obstetrics other than in a dire emergency of the kind referred to in the Medical Board's letter, however he was aware that that information had been provided to Dr Reeves directly by the Medical Board.²²⁰
- 5.58 Dr Arthurson said that he, Dr Robinson and Dr Mortimer agreed, at Dr Reeves' request, not to make it generally known that Dr Reeves was not allowed to provide obstetric services, on the basis that Dr Reeves would comply with the order and was seeking a prompt review of the order which he expected to be successful. However they agreed to indicate that no obstetric service was available.²²¹
- 5.59 Dr Mortimer said that it was his understanding at that time that Dr Reeves was removed from the roster for obstetric services at both Bega and Pambula, based on his discussions with Dr Arthurson and Ms Dwyer.²²²
- 5.60 As noted above, Dr Reeves provided obstetric services in Bega and Pambula District Hospitals again on 9 December 2002, 20 December 2002, 3 January 2003, 8 January and 9 January 2003. Dr Reeves gave evidence that he performed those services because he did not have an option.²²³
- 5.61 The obstetric services provided to patients after 14 November 2002 are of significant concern, in light of the health service's knowledge about the order.

Response of the Area Health Service

Initial response

- 5.62 In the course of the Inquiry, it became evident that the response of the Area Health Service on and after 14 November 2002 to the news that Dr Reeves was not entitled to practise obstetrics was an area for examination that was equally as important as the inquiry into the circumstances of Dr Reeves' appointment. This was largely because Dr Reeves continued to practise obstetrics until at least 9 January 2003 in circumstances where both the Area Health Service and the Medical Board had learned that he had been engaging in medical practice contrary to his conditional registration.
- 5.63 On 14 November 2002, the Registrar of the Medical Board sent a facsimile to Dr Reeves to similar effect as the letter sent to the Southern Area Health Service that day.

On the basis of this order, which has not been lifted or varied, you must not provide any clinical obstetric services or participate in any emergency or on-call obstetric roster. Like any medical practitioner, you may provide services in an emergency situation, such as you may encounter on a plane or in a remote setting. However, this most certainly does not extend to the provision of rostered emergency obstetric services.

- 5.64 Dr Reeves acknowledged that he received that letter.²²⁴

- 5.65 Mr Toft gave evidence that at 2:30pm on 14 November 2002 Dr Reeves contacted him and said that his rights to perform caesarean sections had been suspended with immediate effect. Mr Toft had known that Dr Reeves had been carrying out caesarean sections at Pambula District Hospital.²²⁵
- 5.66 Mr Toft gave evidence consistent with his contemporaneous notes about the events thereafter. He went immediately to assess whether there were any patients in labour or expected to arrive in the labour ward at Pambula District Hospital within the next few days.²²⁶ He said that his priority at that time was to assess the patient position, rather than to question Dr Reeves about what Dr Reeves had told him. This was an appropriate concern.
- 5.67 At 4:30pm Mr Toft sent a memo to the visiting medical practitioners and midwives on the ward. The memo notified staff that all women in labour were to be transferred to the Bega District Hospital due to the unavailability of a surgeon for caesarean sections. Mr Toft displayed the memorandum in the maternity unit and on the general ward and sent it by facsimile to the surgeries of doctors who participated in the maternity roster.²²⁷ The Inquiry has been provided a copy of that memorandum.
- 5.68 Dr Robinson gave evidence that at that time, the Area Health Service made arrangements for the provision of specialist obstetric services to be undertaken by The Canberra Hospital until the resolution of the situation in the Bega Valley.²²⁸

Correspondence between the Medical Board and Dr Reeves

- 5.69 At 5:30pm on 14 November 2002, Mr Dix called Dr Reeves. Dr Reeves indicated that he wished to have his position considered. Mr Dix told him that it was certainly not something that could be decided overnight and would require evidence of continuing medical education “plus addressing the issues that had led to the order”. The file note of that conversation says that Dr Reeves accepted this and indicated that he was not trying to do obstetrics again.
- 5.70 On 15 November 2002, Dr Reeves wrote to the Medical Board to seek a variation of the conditions of registration. His letter was not entirely truthful because it contained a further misleading statement:
- I have since, 1997 not practised Obstetrics and have been concentrating entirely on gynaecological services and have maintained regular operation schedules from 1997 to 2001 at Hornsby Hospital doing four major lists per month, including supervision and training of Registrars from North Shore Training System and five lists monthly at Pambula / Bega Hospital.
- 5.71 In substance, Dr Reeves requested that he be allowed to provide the same technical services as the General Surgeons who were not specialists in Obstetrics. By technical services, he was referring to caesarean sections.²²⁹
- 5.72 At this time, Dr Reeves was assuring Dr Arthurson that he intended promptly to appeal to the Medical Tribunal in order to have the restriction on his practice removed and that such an appeal had good prospects of success.
- 5.73 On 19 November 2002, the Health Committee of the Medical Board met to discuss the breach of conditions. It had before it Dr Reeves’ facsimiles of 13 and 15 November 2002 and other correspondence. The minutes of the meeting note that Dr Reeves was employed by the Southern Area Health Service to provide gynaecology services and obstetric cover. The Committee resolved that Dr Reeves remain in the Performance

Program, that he be required to attend an interview at the Board regarding his breach of the order and that he be advised that the Medical Tribunal is the pathway for review of such orders. Dr Reid informed Dr Reeves of the decision that afternoon.

- 5.74 On 22 November 2002, Dr Reeves sent another letter to the Medical Board about varying his conditions.
- 5.75 The Performance Committee of the Medical Board met on 26 November 2002 and resolved that Dr Reeves remain in the Performance Program. The Medical Board wrote to Dr Reeves again on 29 November 2002 regarding the process for applying for a review of the orders of the Professional Standards Committee.

Further breaches by Dr Reeves: December 2002

- 5.76 Contemporaneous notes kept by Mr Toft record that on 22 November 2002, Dr Reeves telephoned Mr Toft and said that Dr Simonson would be back on Monday and that Dr Reeves would help Dr Simonson with the 'LSCS roster'. That was the roster for lower segment caesarean sections. Mr Toft's notes indicate that he called Dr Mortimer, who was not available, and that he then called Dr Arthurson. Mr Toft made no note of any conversation with Dr Arthurson. Mr Toft does not recall the circumstances.²³⁰
- 5.77 The evidence available to the Inquiry does not enable me to determine what occurred in relation to this telephone call.
- 5.78 On 25 November 2002, a meeting of the Bega Valley Health Service Maternity Services Perinatal Review Committee took place. The minutes of the meeting indicate Dr Reeves's presence at the committee's meeting and that no issues were raised at the meeting. By his presence at this meeting Dr Reeves held himself out to be available to provide obstetric services. This was entirely inappropriate.
- 5.79 Mr Toft gave evidence that meetings of the Perinatal Review Committee took place every 3 months and that the purpose was to review all deliveries at both Bega and Pambula District Hospitals since the previous meeting. Mr Toft said that he was surprised that Dr Reeves was present at the meeting.²³¹ He does not recall which members of staff were aware that Dr Reeves was not entitled to practise obstetrics at that stage. Mr Toft recalls that he did not consider the Committee meeting an appropriate place to raise the issue of Dr Reeves' entitlement to practise obstetrics.²³²
- 5.80 On 9 December 2002, Dr Reeves acted as assistant surgeon at an elective caesarean section at Bega District Hospital. In evidence given to the Medical Tribunal in 2004, Dr Reeves admitted that that case was not an emergency and that his involvement was in flagrant defiance of the Medical Board's orders to him.²³³
- 5.81 On 20 December 2002, Dr Reeves assisted again at an elective caesarean section operation at Bega District Hospital.
- 5.82 On 20 December 2002, Ms Worth of the Medical Board notified Dr Reeves by letter that he was required to attend an interview before the Health Committee on 27 February 2003 in relation to the breach of the order of the Professional Standards Committee. The letter states that:

The purpose of the interview is to gain further information and to explore and clarify issues raised as a result of your breach of the Order. The interviewers have no adjudicatory powers and cannot impose conditions on your registration.

Further breaches by Dr Reeves: January 2003

- 5.83 On 6 January 2003 Mr Toft became aware that Dr Reeves had intervened, on 3 January, in the non-emergency management of an obstetric patient at Pambula District Hospital. He made an incident report which he sent to Ms Dwyer and Dr Mortimer at 4:23pm that day. He wrote in the report:
- Advice that I have received from Drs Mortimer and Arthurson is that Dr Reeves is not to actively participate in the management of any obstetric patients unless it was deemed to be an emergency and that there would be no other person available with the skills who could perform the task required. I believe that the medical officers who participate in the maternity service are aware of this restriction though this has not been confirmed with me. The nursing staff are not aware of the limitations on Dr Reeves practice. Due to the sensitivity of the issues this has not been openly discussed or published.
- 5.84 The report states that Dr Mortimer should be notified and:
- clarification be sought and this be reinforced to the personal (sic) who participate in the provision of the maternity services at both Pambula and Bega Hospitals.
- 5.85 Dr Mortimer received the incident report on 7 January 2003. Between 7 and 11 January 2003 he was acting as Area Director of Medical Services while Dr Arthurson was on leave. This was the first breach by Dr Reeves after 14 November 2002 of which Dr Mortimer was made aware.
- 5.86 Dr Reeves telephoned the Medical Board and stated that Dr Mortimer was having trouble with the definition of obstetric practice. The file note records that Dr Reeves was told that the strict letter of the conditions must be adhered to.
- 5.87 On 8 January 2003, Dr Mortimer spoke to Dr Reeves about the incident of 3 January. Dr Reeves was still drawing a distinction between doing deliveries and other work such as giving consultations, which he said fell outside obstetric practice.²³⁴ Dr Reeves was also assuring Dr Mortimer that a restriction on his ability to perform deliveries would be lifted at the review of his case before the Medical Board in February. Dr Mortimer sought and obtained an undertaking from him that he would not see any obstetric patients.
- 5.88 Dr Mortimer then telephoned Ms Worth at the Medical Board. Ms Worth told him that Dr Reeves' upcoming review at the Medical Board would not result in a relaxation of the order prohibiting Dr Reeves from obstetrics practice and that he would have to make an application to the Medical Tribunal.²³⁵ This was no doubt because the only body which was able to vary the conditions was the Medical Tribunal.
- 5.89 Dr Mortimer testified that he did not have any problem with the definition of obstetrics but that it was clear to him that Dr Reeves did.²³⁶
- 5.90 On 8 January 2003, Dr Reeves acted as assistant surgeon at a caesarean section at Pambula District Hospital.
- 5.91 On 9 January 2003, Dr Mortimer became aware that Dr Reeves had not made any application to the Medical Tribunal for review of the conditions preventing him from practising obstetrics.

- 5.92 Dr Mortimer on that day outlined the position in an email to Dr Robinson and Ms Dwyer and recommended that Dr Reeves' appointment be terminated.

Denise, we have been misled again. I've spoken to Graeme Reeves and been in touch with the Medical Board. I also had Sue Summerhayes send me the Medical Board correspondence that Robert Arthurson received in November.

There is no review planned by the Medical Board. Graeme Reeves has not made any application for a review of the 1997 Professional Standards Committee order that he cease practising obstetrics. He was never appointable to the position and cannot do the job.

There is a brief on the way to you. His appointment needs to be terminated.

I have advised all the GP obstetricians in the Bega Valley that they do not have a specialist service. Graeme Reeves had not told them and has been accepting referrals in his private practice. He has agreed (again) to stop practising obstetrics and I have followed up with a letter. The Medical Board also wants details in writing and I will provide this. He has to attend an interview in late February about breaching the order.

I've spoken to [name], head of O&G at TCH and they will provide specialist telephone advice to Bega GPs. Also warned Michael Holland in Moruya that he may get some referrals.

Dr Jon Mortimer
Deputy Director of Medical Services
Southern Area Health Service

[mobile phone number]

- 5.93 Ms Dwyer responded to both Dr Robinson and Dr Mortimer that she supported Dr Mortimer's advice about terminating Dr Reeves' appointment.
- 5.94 Later that day, Dr Mortimer became aware of a further matter in which Dr Reeves had provided obstetric services at Bega District Hospital on that day. He had performed an assessment of an expectant mother at 36 weeks gestation and given advice about the course of her pregnancy.

Communication with Dr Reeves and staff

- 5.95 On 9 January 2003, memoranda were sent to all medical officers and maternity and theatre staff at both Bega and Pambula District Hospitals to the effect that Dr Reeves did not have clinical privileges in obstetrics. Because he was still entitled to practise gynaecology at the hospitals, the nursing staff and other colleagues were the de facto monitors of that limited right. Ms Dwyer expressed concern about this in an email to Dr Robinson on 10 January 2003.
- 5.96 On 10 January 2003, Dr Mortimer wrote to Dr Reeves advising him that his clinical privileges were limited to gynaecology only and advising him that he may not practise obstetrics. The letter prohibited him from carrying out a list of specified tasks, including attending the labour ward. Although there had been many oral directions given to Dr Reeves, this was the first written correspondence from the Area Health Service confirming the direction not to perform obstetrics.

- 5.97 Dr Mortimer then spoke to Dr Robinson. He sought and obtained approval to suspend Dr Reeves' appointment.²³⁷ Dr Mortimer sent a letter to Dr Reeves advising him that his appointment with the Southern Area Health Service had been suspended with immediate effect. This suspension included his practice as a gynaecologist.
- 5.98 On 10 January 2003, Dr Mortimer also wrote to the Medical Board to inform it that Dr Reeves had recently breached the order banning him from practising obstetrics. He referred to the Medical Board's letter to Dr Arthurson of 14 November 2002.
- 5.99 Dr Reeves telephoned Dr Robinson and put arguments as to why he should continue to be allowed to practice gynaecology. Dr Robinson said that Dr Reeves told her that he had a substantial waiting list of patients and that there was nowhere else for them to be handled. Dr Robinson said that there had been no complaints from staff in terms of his competency to perform the duties of a gynaecologist and that he gave an ironclad guarantee that he would not undertake any form of obstetric practice regardless of any approaches by his colleagues. Dr Robinson accepted these reassurances.²³⁸ Dr Robinson telephoned Dr Mortimer back to inform him that she had resolved to lift the total suspension and continue only the suspension of his obstetric rights. This resulted in a further letter from Dr Mortimer to Dr Reeves that day informing Dr Reeves that he had not been suspended from all practice but highlighting that his clinical privileges were limited to gynaecology.
- 5.100 On 10 January 2003, Dr Mortimer also wrote separately to the GP obstetricians at Pambula and Bega Hospitals to advise them of the restriction on Dr Reeves' practice.
- 5.101 Dr Robinson gave evidence that on 10 January 2003 when she spoke to Dr Reeves, she believed that he was being open about the reasons he had provided obstetric services. She said that the question of his honesty was not of sufficient concern to compel her to suspend or terminate his appointment. Dr Robinson felt that the referral of the matter back to the Medical Board, which Dr Reeves was indicating he would do to seek a variation of the conditions, would enable a rapid resolution of the circumstances relating to his entitlement to practise.²³⁹

Section 66 Inquiry at the Medical Board

Steps prior to Section 66 Inquiry

- 5.102 The Medical Board's initial response to the discovery in November 2002 that Dr Reeves had been practising obstetrics in breach of the order of the Professional Standards Committee was to refer the matter to each of the Health Committee and the Performance Committee of the Medical Board, as noted above. That resulted in a resolution of the Health Committee requiring Dr Reeves to attend for an interview in late February 2003.
- 5.103 As a result of Dr Mortimer's letter of 10 January 2003, alerting the Medical Board to the recent, further breaches by Dr Reeves, the Medical Board sought a response from Dr Reeves. On 22 January 2003, it forwarded Dr Mortimer's letter to Dr Reeves and asked him to provide a written response by 29 January 2003.
- 5.104 In the meantime, the Performance Committee of the Medical Board met on 28 January 2003 to discuss a complaint about Dr Reeves arising out of a consultation in his private rooms in Pambula. The Medical Board received that complaint, dated 18 November 2002, from the Health Care Complaints Commission on 3 January 2003.

- 5.105 The Performance Committee noted that the Medical Board was awaiting a response from Dr Reeves regarding the breaches alleged in Dr Mortimer's letter of 10 January 2003. The Performance Committee resolved as follows:

That the complaint is dealt with in Dr Reeves' forthcoming Performance Assessment unless Dr Reeves moves into the Conduct stream.

If, on receipt of Dr Reeves' reply, it is confirmed that he has undertaken obstetric practice, then a S66 Inquiry should be convened.

- 5.106 The term conduct stream referred to the Medical Board's disciplinary functions.
- 5.107 On 28 January 2002, Dr Reeves telephoned the Medical Board in an effort to explain the breaches referred to it by Dr Mortimer and followed this up with a 5 page letter on 31 January 2003.
- 5.108 The Medical Board's response to the confirmation that Dr Reeves was practising obstetrics was to convene an inquiry under section 66 of the *Medical Practice Act* to take place on 18 February 2003.

Purpose of Section 66 Inquiry

- 5.109 Section 66 of the *Medical Practice Act* requires the Medical Board, if at any time it is satisfied that such action is necessary for the purpose of protecting the life or physical or mental health of any person, to:
- suspend a doctor; or
 - impose conditions upon the doctor's registration.
- 5.110 As noted on the Medical Board's website, section 66 inquiries are akin to injunctive action, where the Medical Board acts rapidly and with minimum formality to suspend or place conditions on a practitioner who it considers poses a threat to the health or safety of any person.
- 5.111 There was no prospect, however, that the Section 66 Inquiry would vary or lift the order of the Professional Standards Committee banning Dr Reeves from practising obstetrics. The only body with the power to do so was the Medical Tribunal.

Outcome of Section 66 Inquiry

- 5.112 Dr Mortimer, Dr Reeves and Dr Simonson gave evidence at the Section 66 Inquiry. Dr Reeves admitted that he had provided obstetric services in breach of the order.
- 5.113 The Section 66 Inquiry found that Dr Reeves had breached the order of the Professional Standards Committee that he cease the clinical practice of obstetrics.
- 5.114 The Section 66 Inquiry found that Dr Reeves did not present, on the evidence before it, a risk to the life or physical or mental health of any person, as defined by section 66, that would require his suspension. The Inquiry found that conditions on his registration would be sufficient to protect the public provided that he remained compliant with previously imposed conditions and the variations and additional conditions imposed by that inquiry. Twelve conditions were imposed pursuant to s 66(1)(b) of the *Medical Practice Act*, effective midnight 21 February 2003, as follows:

Employment-related Conditions

1. To not undertake the clinical management of, or provide clinical services to, or attend women seeking antenatal care from the time of confirmation of pregnancy through to and including childbirth, and the puerperium, with the exception that he may undertake diagnostic ultrasound for pregnant women of less than 20 completed weeks of gestation.
2. To not provide a surgical service or assist another doctor providing a surgical service in the clinical management of childbirth with the exception that he may perform a peripartum hysterectomy for the management of catastrophic obstetric haemorrhage.
3. To seek Board approval prior to changing the nature or place of his practice.
4. To provide the Board with a copy of his employment-related conditions prior to commencing any approved employment signed by or on behalf of his employer and, in the case of his current employer, the Southern Area Health Service, within seven days of these orders.
5. The extent of his professional medical duties is to be guided by his health status and the advice of his treating and Board-nominated practitioners.
6. Dr Reeves authorises and consents to the exchange of information between the Health Insurance Commission and the Board to facilitate monitoring of compliance with these conditions.

Health-Related Conditions

7. To attend for treatment by a general practitioner of his choice at a frequency to be determined by Dr Reeves and the treating practitioners. Dr Reeves is to advise the Board of the names of his general practitioner within seven days of the date of these orders. To authorise the treating practitioner to inform the Board of failure to attend for treatment, termination of treatment or if there is a significant change in health status.
8. To attend for treatment by a psychiatrist of his choice, currently Dr Stella Dalton, at a frequency to be determined by the treating psychiatrist. To authorise the treating psychiatrist to inform the Board of failure to attend for treatment, termination of treatment or if there is a significant change in health status.
9. To continue taking any medication prescribed by his treating psychiatrist.

Monitoring-related Conditions

10. To attend for review by Dr Anthony Samuels, the Board-nominated psychiatrist, at the Board's expense, within four weeks of these orders and thereafter on an annual basis or as otherwise directed by the Board.
11. To attend a Review Interview at the Board in 3 months or as otherwise directed by the Board.
12. To authorise the Board to forward copies of the Impaired Registrants Panel report, Board Review Interview reports and other information relevant to

his impairment and his practise of medicine to the Board-nominated practitioners and his treating practitioners.

- 5.115 The delegates of the Medical Board hearing the Section 66 Inquiry handed down a written decision with reasons on 3 March 2003.
- 5.116 They expressed the belief that Dr Reeves:
purposely and wilfully chose to avoid raising the fact that he was prohibited from practising obstetrics
when he applied for the appointment as specialist obstetrician gynaecologist to the Southern Area Health Service.
- 5.117 They expressed concerns about Dr Reeves' candour during the hearing and noted that he tried to "blur" the distinction between the clinical practice of obstetrics and non-obstetric practice.
- 5.118 The Section 66 Inquiry noted that the evidence presented did not suggest any concerns about Dr Reeves' clinical skills since moving to the South Coast such that he would be a risk to the life or physical or mental health of any person. It was noted that the primary problem appeared to be his "acceptance of the prohibition on obstetric practice and what that might entail". Nevertheless the Section 66 Inquiry said:
The Inquiry believes that if he remains compliant with the conditions imposed upon his registration and there is further clarification of the intent of the PSC decision, then there is no public safety issue.²⁴⁰
- 5.119 The Section 66 Inquiry requested that a copy of the decision be made available to certain persons, including the CEO of the Southern Area Health Service and the General Manager of Bega and Pambula District Hospitals. It noted that the Medical Board would refer a complaint about Dr Reeves to the Health Care Complaints Commission for investigation and subsequent referral to the Medical Tribunal or Professional Standards Committee for disciplinary action.

Events after the Section 66 Inquiry: termination of appointment and de-registration

- 5.120 Initially, Dr Reeves sought to appeal the decision of the Section 66 Inquiry but later withdrew that appeal.
- 5.121 Dr Reeves sent a letter to Dr Robinson on 21 February 2003 setting out the conditions of employment imposed by the Section 66 Inquiry.²⁴¹ On 3 March 2003, the Medical Board sent to Dr Robinson, as well as other persons, including Bega District Hospital and the Medical Boards of the other States and Territories, a copy of the decision of the Section 66 Inquiry.
- 5.122 Dr Robinson stated that if employment related conditions such as those had been included in the Medical Board's letter of 27 December 2001, Dr Reeves would not have been employed.²⁴²
- 5.123 After the Section 66 Inquiry, Dr Reeves appointment at the Southern Area Health Service was not immediately terminated but rather, a process was commenced which was intended to deal with that appointment. On 4 March 2003, Dr Arthurson sent Dr Reeves a letter asking him to show cause why his appointment should not be

terminated. On 12 March 2003, Dr Reeves responded to the Southern Area Health Service letter.

- 5.124 On 16 April 2003 the Southern Area Health Service wrote to Dr Reeves giving him 3 months notice of termination of his appointment.
- 5.125 Dr Reeves filed an appeal to the Minister against the decision to terminate him, under s 106 of the *Health Services Act*, but withdrew that appeal on 3 December 2003.
- 5.126 He continued to practise as a consultant gynaecologist in rooms in Pambula. He continued to apply for positions with the Southern Area Health Service, without success.
- 5.127 In March 2004, the HCCC filed a complaint in the Medical Tribunal against Dr Reeves charging him with unsatisfactory professional conduct and/or professional misconduct relating to repeated violations of the order of the Professional Standards Committee not to practise obstetrics. The HCCC later filed an amended complaint following its investigation arising out of the Section 66 Inquiry. That investigation revealed further occasions on which Dr Reeves had practised obstetrics contrary to the orders upon his registration. The amended complaint dealt with those further violations and added a second aspect to the complaint, relating to the doctor's deliberate failure to inform the Southern Area Health Service during the recruitment process of the order on his practice.
- 5.128 The Medical Tribunal handed down its decision on 23 July 2004. It concluded that Dr Reeves had engaged in gross professional misconduct of the most serious kind and ordered that his name be removed from the Register of Medical Practitioners. It ordered that he not be permitted to apply for a review of the Tribunal's deregistration order for 3 years.
- 5.129 Dr Reeves has not made an application for review of the Tribunal's order.

¹⁷¹ Transcript 83.44; transcript 87.7 (Graeme Reeves).

¹⁷² Transcript of proceedings in Medical Tribunal, transcript 93.58 to 94.15.

¹⁷³ Transcript 90.5; transcript 91.20.

¹⁷⁴ Transcript 91.20.

¹⁷⁵ Transcript 57.40; transcript 91.20; transcript 92.31 to 92.40.

¹⁷⁶ Transcript 92.31 to 92.31.

¹⁷⁷ Transcript 89.1.

¹⁷⁸ Transcript 31.36.

¹⁷⁹ Transcript 13.25; transcript 15-16.

¹⁸⁰ Transcript 239.34 (Dr Arthurson).

¹⁸¹ Transcript 131.28 (Graeme Reeves).

¹⁸² Transcript 88.3.

¹⁸³ Transcript 84.5 to 88.41.

¹⁸⁴ Transcript 88.11.

¹⁸⁵ Transcript 93.47; transcript 94.1; transcript 95.8.

¹⁸⁶ Transcript 274.47; transcript 279.8 (Mr Toft).

¹⁸⁷ Transcript 277.43-47.

¹⁸⁸ Transcript 278.23.

¹⁸⁹ Transcript 85.23 (Graeme Reeves).

¹⁹⁰ Transcript 57.32-41; transcript 91.20.

- 191 Transcript 91.23.
192 Transcript 362.23 (Dr Simonson).
193 Transcript 131.25 (Graeme Reeves).
194 Transcript 106.1-16.
195 Transcript 104.32.
196 Transcript 186.46 (Dr Mortimer).
197 Dr Reeves admitted that in 4 cases before 13 November 2002, he performed caesarean sections as the principal surgeon for patients who had been referred to him transcript 100.38.
198 Transcript 127.35.
199 MFI4.
200 Transcript 284.16.
201 Transcript 387 (Raymond Toft).
202 Transcript 381.7 (Mr Toft).
203 Transcript 382.32.
204 Transcript 286.18.
205 Transcript 383.24.
206 Transcript 385.14 (Mr Toft).
207 Transcript 385.27.
208 Transcript 387.43.
209 Transcript 244 (Dr Arthurson).
210 Transcript 263.27.
211 Statement of Dr Arthurson dated 19 May 2004; transcript 247 (Dr Arthurson).
212 Transcript 133.41 (Graeme Reeves).
213 Transcript 247.18 (Dr Arthurson).
214 Transcript 247.35.
215 Transcript 249.10.
216 Transcript 249.24. Dr Reid stated that Dr Reeves may not provide clinical obstetric services, should not participate in any obstetrics roster and should not be rostered on for emergency obstetrics.
217 Transcript 250.24.
218 Transcript 250.40.
219 Transcript 251.7 (Dr Arthurson); transcript 333.17 (Dr Robinson).
220 Transcript 252.5 (Dr Arthurson).
221 Transcript 253.1.
222 Statutory Declaration of Dr Mortimer dated 30 June 2008.
223 Transcript 110.1 (Graeme Reeves).
224 Transcript 114.30 (Graeme Reeves).
225 Transcript 289.33 (Mr Toft).
226 Transcript 290.8.
227 Transcript 291.31.
228 Transcript 333.30 (Dr Robinson).
229 Transcript 119.4 (Graeme Reeves).
230 Transcript 391.12 (Mr Toft).
231 Transcript 393.23.
232 Transcript 395.16.
233 Transcript of Medical Tribunal proceedings at transcript 139.20 and transcript 137.55.
234 Transcript 195.26 (Dr Mortimer).
235 Transcript 197.5.
236 Transcript 192.7.

²³⁷ Transcript 199.34.

²³⁸ Transcript 335.5 (Dr Robinson).

²³⁹ Transcript 339.44 to 340.40.

²⁴⁰ Pages 13 and 14 of the decision of the Section 66 Inquiry.

²⁴¹ Transcript 337.16 (Dr Robinson).

²⁴² Transcript 339.10.

6 The availability of information from the NSW Medical Board

Orders and conditions	82
The Register of Medical Practitioners	82
Hypothetical request to the Medical Board about registration.....	83
Improvements to correspondence from the Medical Board.....	85
Availability of judgments and orders of PSC	85
Notification of orders and conditions under <i>Medical Practice Act</i>	86
Amendments to the <i>Medical Practice Act</i>	87

Orders and conditions

- 6.1 Part of the confusion about Dr Reeves registration, and Dr Reeves' ability to deceive the Southern Area Health Service, arose because of the use of 2 different categories by the Professional Standards Committee to describe what, ultimately, were conditions on registration. The decision of the Professional Standards Committee set out "Orders" 1 to 3 and "Conditions" 1 to 8. The question is whether a person who made a request to the Medical Board in 2002 for information about Dr Reeves' registration status would have been told that he was subject to an order banning him from the clinical practice of obstetrics.

The Register of Medical Practitioners

- 6.2 The Register of Medical Practitioners is kept under the *Medical Practice Act 1992* (NSW). The New South Wales Medical Board is the body responsible for keeping the register of all doctors practising in New South Wales. The *Medical Practice Act* requires the Medical Board to ensure that certain information relating to the registration of a registered medical practitioner is publicly available on request.
- 6.3 Section 135A of the *Medical Practice Act* requires that any conditions imposed on the registration of the practitioner and any other order made in respect of the practitioner under the *Medical Practice Act* be made available on request. Section 135A(2) permits the Medical Board not to disclose anything that the Medical Board considers relates solely or principally to the physical or mental capacity of a person to practise medicine. This includes 'impairment' conditions which are imposed with the voluntary agreement of the practitioner where the practitioner is considered to suffer from a physical or mental impairment, disability, condition or disorder which detrimentally affects or is likely to detrimentally affect his or her capacity to practise medicine.²⁴³ Due to privacy considerations, impairment conditions are not publicly available.
- 6.4 In 2002, the Register of Medical Practitioners was not available on the Internet. It was nevertheless a public document. Therefore, any conditions or orders on registration imposed through proceedings of various committees and bodies provided for under the *Medical Practice Act* were available to the public on request, with the exception of impairment conditions. Area Health Services were, and are, considered to be members of the public.²⁴⁴
- 6.5 In evidence given to the Inquiry, the Registrar of the Medical Board, Mr Dix, said that it is necessary, in relation to some medical practitioners, for the Medical Board to make a decision on a case by case basis as to whether conditions are impairment conditions or, rather, conditions which can be publicly disclosed. Generally speaking, the distinction is based on whether the condition relates to the doctor's physical or mental health, which constitutes an impairment condition, or the extent of any restriction on the doctor's entitlement to practice medicine, which is a disclosable condition.²⁴⁵
- 6.6 Impairment conditions can be disclosed, however, with the consent of the medical practitioner.
- 6.7 Mr Dix stated in his evidence that many medical practitioners who are subject to impairment conditions do not have any other condition or order on their registration.

- 6.8 At the time of the Medical Board's letter dated 27 December 2001, there were two different pathways for the programs administered by the Medical Board – Professional Conduct and Health. Although the matters that had led to the proceedings before the Professional Standards Committee concerned Dr Reeves' performance and competence as a medical practitioner, a determination was also made that he suffered "an impairment" within the meaning of the *Medical Practice Act*. Dr Reeves had raised his depressive condition by way of defence before the Professional Standards Committee. The imposition of conditions to ensure the monitoring of Dr Reeves' mental health meant that he fell principally under the Health pathway. Dr Reeves officially moved into the impairment program in August 1999 when he was informed at a Board Review interview that he would thenceforth be considered to be part of that program. Mr Dix noted in his evidence however that Dr Reeves did not fit neatly into one area.²⁴⁶ This background provides some of the context to the problem that arose in 2002 after the Medical Board sent to Dr Reeves the letter of 27 December 2001 containing a list of his impairment conditions only.

Hypothetical request to the Medical Board about registration

- 6.9 Mr Dix informed the Inquiry that in 2002, it was the practice of Medical Board staff to consult the paper file held in relation to a medical practitioner when the registration status of the medical practitioner needed to be confirmed. Medical Board staff also had access to a computer system which specified, in relation to each registered medical practitioner, the conditions attaching to registration.
- 6.10 Mr Dix was able to clarify his understanding, which he gave in evidence, that the Medical Board's computer records at the time would have included the 3 orders made by the Professional Standards Committee. Following the hearing, Mr Dix informed the Inquiry that a search was made for the purpose of determining what the Medical Board's computer records would have shown in 2002 with respect to Dr Reeves' medical registration. That search showed that on 2 December 2002 text was placed on the electronic record relating to Dr Reeves' registration to the effect that he was subject to an order that he cease the clinical practice of obstetrics.
- 6.11 This strongly suggests that prior to 2 December 2002, the order of the Professional Standards Committee that Dr Reeves cease the clinical practice of obstetrics was not readily visible within the Medical Board's computer records. If a member of the public had contacted the Medical Board to find out about Dr Reeves' registration status, Medical Board staff would have had to consult the paper file relating to Dr Reeves' in order to find out or confirm the existence of the order.
- 6.12 However, Mr Dix stated that, due to Dr Reeves' involvement with the Medical Board over the preceding years, he would have expected that most of the Medical Board staff knew at that time about the order banning Dr Reeves from practising obstetrics.²⁴⁷
- 6.13 There was no single person or section within the Medical Board by whom enquiries from the public about the conditional registration of a medical practitioner were answered. If an enquiry had been made by a member of the public about Dr Reeves' conditional registration, such as by the Southern Area Health Service, Mr Dix said that the enquiry would have been directed to the person within the Medical Board having responsibility for the program administered by the Medical Board relevant to that doctor. Mr Dix stated that the Medical Board was small enough for all staff to know who was responsible for answering enquiries.

- 6.14 In 2002, because Dr Reeves fell principally under the Health program, Mr Dix stated that requests from the public about Dr Reeves' registration as a medical practitioner would ordinarily have been answered by Evan Rawstron, the Health Program Coordinator.²⁴⁸
- 6.15 With regard to the Medical Board's letter dated 27 December 2001, Mr Dix stated that conditions 1 to 6 would have been considered to be impairment conditions as they related solely or principally to Dr Reeves' health. If an area health service made an enquiry about Dr Reeves' conditional registration, the Medical Board would have disclosed the fact that health-related conditions existed. However the Medical Board would not have disclosed the content of the conditions without Dr Reeves' consent. On the other hand, the employment-related conditions 7 and 8 were practice conditions rather than impairment conditions and would therefore have been freely disclosed.²⁴⁹
- 6.16 It is impossible to say with certainty whether a person answering a request for information about Dr Reeves' conditional registration on behalf of the Medical Board would also have told the enquirer that there was an order banning Dr Reeves from practising obstetrics. Hindsight can easily result in inaccurate speculation.
- 6.17 There is evidence within the Medical Board's records that such enquiries were made in 1997 after the Professional Standards Committee had handed down its decision, not by prospective employers, but by patients and members of the public. On those occasions the Medical Board freely disclosed the information that Dr Reeves had been banned from practising obstetrics.
- 6.18 On 31 October 2002 when Dr Arthurson contacted the Medical Board to seek information about how to manage Dr Reeves' condition, the file note taken by Ms Worth shows clearly that she did not refer Dr Arthurson to the order of the Professional Standards Committee banning Dr Reeves from the practice of obstetrics. Because the order of the Professional Standards Committee was not visible on the Medical Board's computer record, Ms Worth would have had to consult the paper file relating to Dr Reeves in order to find out or confirm the existence of that order.
- 6.19 Dr Arthurson discovered the existence of the order only when Dr Reid of the Medical Board telephoned him on 13 November 2002 to discuss his contact with the Medical Board at the end of October. It was completely clarified on 14 November 2002.
- 6.20 This course of events shows that comprehensive information about a doctor's registration status was not systematically revealed.
- 6.21 I note, however, that the purpose and content of Dr Arthurson's conversation with Ms Worth on 31 October 2002, as recorded by Ms Worth and recounted in evidence by Dr Arthurson, suggests that the existence of the order was not strictly relevant. The purpose of Dr Arthurson's call was to find out more information to assist in the management of Dr Reeves' impaired status. There is no evidence that Dr Arthurson referred to the fact that Dr Reeves' held an appointment as obstetrician or that he was practising obstetrics, such that Ms Worth would have been alerted to the need to refer to the order. Even had Ms Worth known about the order of the Professional Standards Committee banning Dr Reeves from the practice of obstetrics without needing to consult Dr Reeves' file (whether the electronic or the paper file), it is by no means certain that she would have been prompted by the question asked of her to refer to those orders.
- 6.22 Furthermore, I am not satisfied that, in early 2002, a person, such as Dr Arthurson or Dr Mortimer, requesting from the Medical Board a list of the conditions attaching to Dr Reeves' registration, would have been told that he was also subject to an order of a Professional Standards Committee that he cease the clinical practice of obstetrics.

Specific information of that nature may have been provided depending on who answered the enquiry. However the computer systems of the Medical Board did not ensure that the order was clearly visible until 2 December 2002 when the computer record was rectified.

Improvements to correspondence from the Medical Board

- 6.23 Mr Dix gave evidence that the Medical Board has instituted processes internally to ensure that its correspondence cannot be misused in the same way that Dr Reeves misused its letter dated 27 December 2001.²⁵⁰ Mr Dix said that letters should not leave the Medical Board that do not list the totality of the conditions and orders to which a medical practitioner's registration is subject.²⁵¹ The present practices of the Medical Board ought avoid this situation arising again.

Availability of judgments and orders of PSC

- 6.24 Although Dr Reeves did not disclose to the Southern Area Health Service that he had come before a Professional Standards Committee, the situation of the Southern Area Health Service may have been ameliorated if the judgment of the Professional Standards Committee, or at least the orders and conditions of the Professional Standards Committee, had been publicly available.
- 6.25 Professional Standards Committees sit in the absence of the public unless the Committee otherwise directs.²⁵² A Professional Standards Committee is required to provide a written statement of a decision to the complainant, to the practitioner concerned and to the Medical Board.²⁵³ It may also provide the statement of a decision to such other persons as the Committee thinks fit.²⁵⁴ As opposed to decisions of the Medical Tribunal, it is not the practice of the Medical Board to make the decisions of Professional Standards Committees publicly available.
- 6.26 The Professional Standards Committee relating to Dr Reeves made orders for the publication of its judgment and/or orders and conditions to specified individuals. In accordance with the usual practice, the judgment and orders and conditions were not made publicly available.
- 6.27 When they commence operation, recent amendments to the *Medical Practice Act* will require the Medical Board to make publicly available a decision of a Professional Standards Committee if the decision is in respect of a complaint that has been proved or admitted in whole or in part, unless the Professional Standards Committee orders otherwise.²⁵⁵ The new section 180(4) will permit the Medical Board to disseminate any other decision of a Professional Standards Committee as the Medical Board thinks fit, subject to any alternative order by the Professional Standards Committee.²⁵⁶ Amended section 165 will also require decisions of the Medical Tribunal to be made public, unless the Tribunal directs otherwise. The latter amendment will confirm the current practice.
- 6.28 The amendments also require the proceedings of a Professional Standards Committee to be held in public, unless the Committee directs otherwise.²⁵⁷
- 6.29 In my view, these amendments will increase the chance that a public health organisation, or any member of the public, will have the requisite knowledge as to when a medical practitioner is practising in breach of conditions on his or her practice. Such amendments are likely to minimise the chance of the events surrounding Dr Reeves'

appointment as an obstetrician in breach of his conditional registration being repeated with other practitioners.

Notification of orders and conditions under *Medical Practice Act*

- 6.30 In 1997, no legislation required or permitted the Medical Board to give notice of any order or condition imposed under the *Medical Practice Act* to the practitioner's employer or body in respect of which the practitioner was accredited. In 1997, the Professional Standards Committee directed that a copy of its orders should be made available to the 3 hospitals at which Dr Reeves held appointments at the time of the complaints considered by the Committee.
- 6.31 Since 1 October 2000, the Medical Board has been required to give the employer of a registered medical practitioner notice of orders made in respect of the practitioner under the *Medical Practice Act*, or conditions on the registration of the practitioner.²⁵⁸ Notice is also required to be given to the chief executive officer of any public health organisation in respect of which the practitioner is a visiting practitioner.²⁵⁹ The Medical Board is only required to give such notice to the employer, or body in respect of which the practitioner is accredited, which had that status at the time of the relevant conduct.²⁶⁰
- 6.32 Since 1 March 2005, the Medical Board has a discretion to provide notice of such matters to any subsequent employer of the practitioner, or body in respect of which the practitioner is subsequently accredited, that the Medical Board considers appropriate.²⁶¹
- 6.33 It is apparent that situations may arise where an employer (or body in respect of which a medical practitioner is accredited) is not notified that an order has been made in respect of the practitioner under the *Medical Practice Act*, or that conditions have been imposed on his or her registration. At the time that an order is made, the doctor may be employed by a different health organisation to the organisation that employed him or her at time of the conduct giving rise to the order. There is no obligation on the Medical Board to notify the subsequent health organisation about the order. In fact, the Medical Board may not have information about where the doctor is practising.
- 6.34 It is not appropriate, or even possible, for the Medical Board to make information about orders and conditions on a medical practitioner's registration available to every prospective employer. The Medical Board cannot possibly keep track of the number of doctors practising in New South Wales at any given time (as opposed to registered) and the employment of each of them. Some medical practitioners have one long term employer within the health system and others undertake a series of temporary locum appointments. Some medical practitioners registered in New South Wales do not even reside within the state.
- 6.35 That being the case, the only feasible system for ensuring that prospective employers of medical practitioners are made aware of all orders and conditions relating to the practitioner's registration is to require them to seek proof of registration and to independently verify with the New South Wales Medical Board the details of the person's registration status prior to appointment. That obligation exists under current NSW Health policy.

Amendments to the *Medical Practice Act*

- 6.36 The *Medical Practice Amendment Act 2008* has not yet commenced operation. However the amendments incorporated in that legislation are intended to deal with the deficiencies in the powers available to the various regulatory bodies required to make decisions about medical practitioners.²⁶²
- 6.37 These included an expansion of the powers of the Medical Board under section 66 to require the Medical Board to suspend a registered medical practitioner from practising medicine for such period (not exceeding 8 weeks) as is specified in the order or to impose any conditions that the Medical Board considers appropriate:
- if at any time [the Medical Board] is satisfied that it is appropriate to do so for the protection of the health and safety of any person or persons (whether or not a particular person or persons) or if satisfied that the action is otherwise in the public interest.
- 6.38 The objects section of both the *Medical Practice Act* and the *Health Care Complaints Act* have been amended to clarify that in the exercise of all powers under both statutes:
- the protection of the health and safety of the public is the paramount consideration.
- 6.39 The amendments enable a Professional Standards Committee or the Medical Tribunal, when imposing an order or condition of registration on a medical practitioner, to provide that a contravention of the order or condition will result in the practitioner being deregistered. Such an order or condition is then a “critical compliance order or condition” under section 61 of the *Medical Practice Act*.
- 6.40 Importantly, the Medical Board will be required, by the new section 66(2) of the *Medical Practice Act*, to suspend a registered medical practitioner from practising medicine if it is satisfied at any time that the practitioner has contravened a critical compliance order or condition. The Medical Board will also be required to refer the matter to the Medical Tribunal as a complaint. The suspension lasts until that complaint is dealt with by the Tribunal.
- 6.41 When the matter comes before the Medical Tribunal, the Tribunal will be required to order that the practitioner be deregistered if it is satisfied that he or she has contravened a critical compliance order or condition under section 61.²⁶³
- 6.42 If these provisions had existed in 1997, they would have allowed the Professional Standards Committee to decide that the order banning Dr Reeves from the practice of obstetrics was an order the contravention of which would result in him being deregistered. The Medical Board would have been required to suspend him from the practice of medicine when it first learned about the breaches on 13 November 2002.
- 6.43 The effective operation of the provisions depends on the Medical Board being made aware of the matters which may constitute a contravention of a critical compliance order or condition and then satisfying itself that there has been a contravention of that order or condition. The effective operation of the provisions also relies on a Professional Standards Committee clearly stating in its reasons for judgment that the order or condition that it makes or imposes will, if breached, result in deregistration.
- 6.44 Two medical indemnity organisations²⁶⁴ made a submission to the Inquiry in which they drew attention to the fact that the new provisions relating to critical compliance conditions do not provide the Medical Tribunal after hearing a complaint with any discretion not to deregister a practitioner if it is satisfied that the person has contravened

a critical compliance order or condition. The organisations submitted that the new provisions do not provide the Medical Tribunal with any discretion to consider whether the person's failure was deliberate, trivial or accidental or otherwise explicable for good reasons. Given the wording of section 64(1A), I can see the force in this submission.

- 6.45 My Inquiry has brought to light a number of deficiencies in the regulatory system. However these deficiencies appear to have been largely addressed by the *Medical Practice Amendment Act 2008*, which is yet to commence. The amendments made in that Act include:
- Provisions requiring a legally qualified or lay member of the Medical Board to sit on all section 66 inquiries (amended section 169).
 - Provisions requiring a registered medical practitioner to include with the annual return furnished to the Medical Board a certificate of current professional indemnity insurance or other evidence of coverage (new section 127A).
 - Provisions requiring a review body to take into account all complaints received about a medical practitioner (whether before or after the order being reviewed was made), where a medical practitioner applies to the Medical Board for review of the suspension, de-registration or placing of conditions on registration (new subsection 94A(3)).
 - Provisions requiring registered medical practitioners to provide reports to the Medical Board in relation to misconduct by other registered medical practitioners (practising medicine while intoxicated by drugs, or in a manner that constitutes a flagrant departure from accepted standards of professional practice or competence and risks harm to some other person, or else engaging in sexual misconduct in connection with the practice of medicine) (new section 71A).
 - Provisions enabling the Medical Board to give notice of any action taken under section 66 to any person or body the Board reasonably considers it appropriate to notify (new subsection 191B(1A)).
- 6.46 With regard to the new provisions relating to reportable misconduct, I am not in a position, given the nature of my task, to express a view as to whether those provisions would have applied to the conduct of Dr Reeves if they had been on the statute book in 2002. As noted in Chapter 1, it is not within the Terms of Reference of my Inquiry to review complaints about the care received by patients within the public health system in New South Wales. As a consequence, I have not conducted an inquiry into the clinical aspects of the incidents and complaints involving Dr Reeves during his appointment with the Southern Area Health Service. I am therefore unable to express a view about whether the conduct of Dr Reeves, during his appointment with the Southern Area Health Service, could have fallen within the type of clinical malpractice which constitutes "reportable misconduct" under the amendments (that is, practising medicine while intoxicated by drugs, or in a manner that constitutes a flagrant departure from accepted standards of professional practice or competence and risks harm to some other person, or else engaging in sexual misconduct in connection with the practice of medicine).
- 6.47 The organisations' submissions also drew attention to the fact that the new reportable misconduct provisions do not contain a reasonable excuse exception to the mandatory reporting requirement. They submitted that the provisions may therefore have unintended consequences, such as requiring medical practitioners who counsel or treat other practitioners to report information conveyed to them in the course of their therapeutic relationship. The organisations pointed out that it would be contrary to the public interest to deter practitioners from engaging in a fulfilling therapeutic relationship.

- 6.48 The organisations also submitted that the provisions would require any employee of a medical defence organisation who was a registered medical practitioner to report a member of the organisation who rang to seek advice about the ongoing management of a patient and disclosed reportable conduct. It was submitted that this would be a disincentive to the seeking of advice which was in the public interest.
- 6.49 Again I can see much force in these submissions and those outlined above in paragraph 6.44. The legislation is novel. On its face it is clearly in the public interest. There is no reason in my view to delay its implementation on account of these concerns. Nevertheless, it would be appropriate for NSW Health to undertake a review of the operation of the legislation after the legislation has been operating for 12 months to see whether amendments are necessary to address these concerns.

Recommendation 1: NSW Health undertake a review of the operation of the provisions of the *Medical Practice Amendment Act 2008* relating to (a) critical compliance conditions or orders and (b) reportable misconduct, 12 months after the Act commences, to determine whether amendments are necessary to address the concerns outlined in paragraphs 6.44 and 6.47 to 6.48 of this Report.

²⁴³ *Medical Practice Act*, Dictionary, clause 3.

²⁴⁴ Transcript 3.35 (Mr Dix).

²⁴⁵ Transcript 4.16 (Mr Dix).

²⁴⁶ Transcript 9.9 (Mr Dix).

²⁴⁷ Transcript 7.41 (Mr Dix).

²⁴⁸ Transcript 8.9-34; transcript 9.4 (Mr Dix).

²⁴⁹ Transcript 6.36 to 7.31 (Mr Dix).

²⁵⁰ Transcript 48.43 (Mr Dix).

²⁵¹ Transcript 21.3 (Mr Dix).

²⁵² Section 176, *Medical Practice Act*.

²⁵³ Section 180(1), *Medical Practice Act*.

²⁵⁴ Section 180(3), *Medical Practice Act*.

²⁵⁵ *Medical Practice Amendment Act 2008*; Section 180(4)(a), *Medical Practice Act*

²⁵⁶ Section 180(4)(b), *Medical Practice Act*.

²⁵⁷ Amended section 176.

²⁵⁸ Section 191B, *Medical Practice Act*.

²⁵⁹ As well as the chief executive officer (however described) of any private hospital or day procedure centre in respect of which the practitioner concerned is accredited, and the chief executive officer (however described) of any nursing home (within the meaning of the Public Health Act 1991) in respect of which the practitioner concerned is accredited.

²⁶⁰ Subsections 191B(4)(a) and 191B(5)(a), respectively.

²⁶¹ *Health Registration Legislation Amendment Act 2004* was assented to on 15 December 2004 and commenced on 1 March 2005 (sec 2 and GG No 28 of 25.2.2005, p 478).

²⁶² Cf. New South Wales, *Medical Practice Amendment Bill 2008*: Second Reading, Legislative Council, 4 June 2008, 8108 (The Hon. Penny Sharpe, Parliamentary Secretary).

²⁶³ New section 64(1A).

²⁶⁴ Avant Mutual Group Limited and MDA National Insurance Pty Limited.

7 Findings and proposals for change

The conduct of Dr Reeves.....	92
Recruitment practices and policies for visiting practitioners.....	95
Checking of registration.....	95
Documentation for the credentialing and appointment processes.....	96
Composition of credentials and interview committees.....	98
Reference checking.....	99
Checking of past performance and disciplinary history.....	101
Proposed Service Check Register.....	101
Temporary locum appointments.....	103
Management of complaints and obstetric ban by the Southern Area Health Service.....	104
Management of complaints about Dr Reeves.....	104
Management of the obstetric ban.....	105
Current relevant policy.....	106
Dr Robinson.....	107
Dr Arthurson.....	108
Dr Mortimer.....	108
The benefit of hindsight.....	109

The conduct of Dr Reeves

- 7.1 Dr Reeves' dishonesty was the key reason he was recruited to a position he was legally unable to fulfil. He deliberately made out to the Southern Area Health Service that it was his preference not to practise obstetrics and that the Medical Board's only interest in him was due to a depressive condition. His written application shows that he produced enough information to suggest that he was an appropriate candidate and omitted key information that may have led to lines of inquiry about the true scope of his entitlement to practise medicine.
- 7.2 Dr Reeves stated that he expected the Area Health Service to contact the Medical Board to check his registration status. He said in evidence that the referees he provided knew about his obstetric situation.²⁶⁵ This may well be so. However, this could not excuse his conduct in intentionally concealing from the Area Health Service the orders of the Professional Standards Committee. Moreover, referees would not necessarily raise the question of the obstetrics ban unless elicited by a direct question.
- 7.3 It is clear from all the circumstances that Dr Reeves' successfully obtained his appointment with the Southern Area Health Service by intentionally deceitful means and that, having done so, he did not wish to jeopardise his new status. He had set up his consulting rooms for gynaecology patients in Pambula and, as he stated in his evidence, having spent the money setting up those rooms, he had nowhere else to go.²⁶⁶ In my view, Dr Reeves was motivated by a desire to advance his own interests in ensuring that he could successfully conduct his specialty gynaecological practice.
- 7.4 After his appointment, he continued to ignore the restrictions placed on him by carrying out and assisting at caesarean section operations and offering obstetric advice and management.
- 7.5 There is an inherent inconsistency in Dr Reeves' position that he believed himself entitled to practise obstetrics in emergency situations and the frank admission that he sought to conceal from the Southern Area Health Service the order banning him from obstetric practice in the knowledge that the appointment required him to carry out work in breach of that order. Ultimately, his explanation that he was entitled to practise obstetrics in emergency situations or where another practitioner was not available is entirely disingenuous.
- 7.6 Despite admitting that he sought to deceive the Area Health Service, Dr Reeves proffered a number of justifications for his provision of obstetric services. These explanations came across as contrived. As noted earlier, the need for 'emergency care' was often cited as a justification. He also stated that he had had been led to believe that the obstetric services provided in the Bega Valley before he arrived were adequate and under control.²⁶⁷ It soon became apparent to him that this was not the case and that he could not stand back and watch "disaster after disaster happen". He said that an additional factor motivating him to intervene in obstetric cases was Dr Simonson's absence for 6 weeks in 2002 which threatened to close Pambula Hospital labour ward.

I felt that I didn't have an option if I was to allow the women who wanted to be confined at Pambula to be so.

The ambulance service was not terribly efficient. So I chose to breach the conditions knowingly because I felt that the concern for the patients overrode the restrictions on my practice.

- 7.7 I found these explanations vague, unconvincing and obfuscatory.

- 7.8 I have a real doubt as to whether Dr Reeves ever accepted the validity of the orders of the Professional Standards Committee reprimanding him for unsatisfactory professional conduct and banning him from the practice of obstetrics. I have this doubt notwithstanding Dr Reeves' statements, during cross-examination, that in 2002, he accepted the validity of the findings against him by the Professional Standards Committee and the reflection that they had upon his competence to practise in the obstetrics field.
- 7.9 After Dr Reeves attended the Inquiry to answer questions, the Inquiry gave to him written notice of the findings that were potentially to be made against him and an opportunity to provide written submissions in relation to those potential findings. Dr Reeves indicated through his solicitor that he did not wish to say anything specifically in relation to the proposed findings. However, through his solicitor, he indicated that he had reflected upon his conduct following his appearance before the Special Commission and conveyed his sincere regret for his actions.
- 7.10 I make the following findings concerning Dr Reeves:
- (a) In his written application to the Southern Area Health Service submitted under cover of letter dated 10 February 2002, Dr Reeves intentionally concealed the fact that the Professional Standards Committee of the Medical Board had in 1997 ordered that he cease the clinical practice of obstetrics.
 - (b) In his written application to the Southern Area Health Service submitted under cover of letter dated 10 February 2002, Dr Reeves intentionally concealed the findings as to his professional conduct which gave rise to the order of the Professional Standards Committee of the Medical Board that he cease the clinical practice of obstetrics.
 - (c) In his written application submitted under cover of letter dated 10 February 2002, Dr Reeves provided to the Southern Area Health Service a letter from Evan Rawstron of the Medical Board dated 27 December 2001 with the intention of misleading the Southern Area Health Service about the true scope of the limitations placed on his entitlement to practise medicine in New South Wales.
 - (d) Dr Reeves intentionally concealed the order referred to in (a) above and the findings as to his professional conduct which gave rise to the said order during his discussions with (i) Dr Jon Mortimer and (ii) Dr Robert Arthurson in the period leading up to 24 April 2002, on which date he signed a contract of fees for services with the Southern Area Health Service.
 - (e) Dr Reeves intentionally concealed the order referred to in (a) above and the findings as to his professional conduct which gave rise to the said order during his interview with the Medical and Dental Appointments Advisory Committee of the Southern Area Health Service on 2 April 2002.
 - (f) Dr Reeves intentionally concealed the order referred to in (a) above and the findings as to his professional conduct which gave rise to the said order during his discussions with Dr Frank Simonson in the period leading up to a temporary appointment with the Southern Area Health Service between 10 and 13 April 2002 as locum specialist obstetrician gynaecologist for Dr Simonson.
 - (g) On 24 April 2002, Dr Reeves signed a fee for services contract with the Southern Area Health Service (granting him clinical privileges consistent with credentials as a specialist obstetrician and gynaecologist constrained by the delineated role of Pambula and Bega District Hospitals and requiring him to provide an on call obstetric service and perform emergency caesarean sections if indicated) and did

so in circumstances where he had, on that day, been provided with a complete contract by Mr Raymond Toft consisting of 18 pages.

- (h) Dr Reeves did (a)-(g), excluding (f), above in the knowledge that in each case a requirement of the appointment would be to provide specialist obstetric back-up services for GP obstetricians in both emergency situations, by being on a roster and being on call, and situations where specialist obstetric advice and intervention was required.
- (i) Dr Reeves did (f) above in the knowledge that a requirement of the appointment would be to provide specialist obstetric services for caesarean sections, if indicated.
- (j) In his telephone conversation with Evan Rawstron on 12 April 2002 and his letter to Evan Rawstron dated 14 April 2002, Dr Reeves intentionally concealed from the Medical Board of New South Wales the fact that his practice would thenceforth involve the clinical practice of obstetrics.
- (k) On and from 24 April 2002, Dr Reeves intentionally, and in contravention of the condition requiring him to give to the Board prior notice of any change in the nature of his practice, failed to disclose to the Medical Board of New South Wales the fact that his appointment with the Southern Area Health Service would thenceforth involve the clinical practice of obstetrics.
- (l) Dr Reeves intentionally concealed the order referred to in (a) above and the findings as to his professional conduct which gave rise to the said order during the course of his appointment with the Southern Area Health Service, until he was advised by Dr Robert Arthurson on 13 November 2002 that the existence of the order had been made known to Dr Arthurson.
- (m) On 14 May 2002, Dr Reeves deliberately failed to disclose at a Medical Staff Council meeting at Bega District Hospital the order referred to in (a) above and the findings as to his professional conduct which gave rise to the said order because of his concern that such disclosure would cause financial detriment to his gynaecological practice.
- (n) In deciding to put his name forward to perform caesarean sections at Pambula and Bega District Hospitals, Dr Reeves was motivated by a desire to advance his own interests in ensuring that he could successfully conduct his speciality gynaecological practice.
- (o) During the course of his appointment with the Southern Area Health Service Dr Reeves deliberately failed to disclose to fellow practitioners the order referred to in (a) above and the findings as to his professional conduct which gave rise to the said order because of his concern that such disclosure would cause financial detriment to his gynaecological practice.
- (p) Before 13 November 2002, Dr Reeves engaged in the clinical practice of obstetrics on 32 occasions in situations which did not constitute a dire emergency of the kind described in the second sentence of the third paragraph of the letter to Dr Reeves dated 14 November 2002 from the Medical Board.
- (q) On 13 November 2002, Dr Arthurson telephoned Dr Reeves about a conversation he had had with the Medical Board that day. During his conversation with Dr Arthurson, Dr Reeves stated that the Medical Board had told Dr Reeves that he was allowed to practise obstetrics in an emergency. In so stating the position, Dr Reeves intended to deceive Dr Arthurson.

- (r) By his letter to the Medical Board dated 13 November 2002, Dr Reeves intended to deceive the Medical Board about the extent of his practice of obstetrics during his appointment with the Southern Area Health Service.
- (s) On and after 13 November 2002, Dr Reeves engaged in the clinical practice of obstetrics on six occasions, namely, 13 November 2002, 9 December 2002, 20 December 2002, 3 January 2003, 8 January 2003 and 9 January 2003 in non-emergency situations and in flagrant defiance of the order referred to in (a) above.
- (t) On and after 13 November 2002, Dr Reeves engaged in the clinical practice of obstetrics on six occasions, namely, 13 November 2002, 9 December 2002, 20 December 2002, 3 January 2003, 8 January 2003 and 9 January 2003 in non-emergency situations and in flagrant defiance of the undertaking given to Dr Arthurson on 13 November 2002 that he would not engage in obstetric practice.
- (u) Between the time of his initial approach to the Southern Area Health Service in either December 2001 or early January 2002 and July 2003, Dr Reeves knew at all times that he was not entitled under his medical registration to engage in the clinical practice of obstetrics, including being placed on a roster to carry out any services which being on a roster might require.

7.11 As to the conduct of Dr Reeves, I make the following recommendation.

Recommendation 2: The conduct of Dr Reeves in seeking and obtaining an appointment as a visiting specialist obstetrician and gynaecologist with the Southern Area Health Service be referred to the NSW Director of Public Prosecutions for consideration as to whether he ought be prosecuted for an offence or offences against the *Crimes Act 1900* (NSW) or any other legislation.

7.12 As to the issue surrounding the necessity of providing emergency treatment, I make the following recommendation.

Recommendation 3: The question of whether it is appropriate to amend the *Medical Practice Act 1992*, and in particular the definition of unsatisfactory professional conduct, and any other related like legislation, so as to make plain whether individuals whose legal right to practise medicine is restricted ought be under any, and if so what, obligation to provide emergency medical care contrary to the restriction on their right to practise should be referred to the New South Wales Law Reform Commission for inquiry and report.

Recruitment practices and policies for visiting practitioners

Checking of registration

7.13 The outcome may have been different if the systems in 2002 had required public health organisations to verify the medical registration of a medical practitioner with the Medical Board before making an appointment. However, in the case of Dr Reeves' registration, as I have noted earlier, simply making such a check may not have produced any more information than that provided in the letter of 27 December 2001 from the Medical Board.

- 7.14 When it appointed Dr Reeves, the Southern Area Health Service followed the general practice applying at the time which did not include a requirement that his registration status be independently verified with the Medical Board. No policy directive required that such independent verification take place.
- 7.15 It was not until 2005 that the Department of Health promulgated a clear set of standards for implementation by the area health services relating to the appointment, credentialing and delineation of clinical privileges of senior medical staff, a term which includes visiting medical officers.²⁶⁸ One of the policy directives containing those standards requires public health organisations to verify registration and current entitlement to practise with the Medical Board.²⁶⁹ I do note, however, that that requirement is contained in an Appendix to the relevant policy directive under a heading 'sample checklist' and is not easily identified.
- 7.16 The effectiveness of the current policy depends on the promptness with which the Medical Board updates the Register of Medical Practitioners, which is available on-line, with any conditions applying to a doctor's registration. It also depends on the policy being properly implemented by the area health services.
- 7.17 In 2007, the Greater Southern Area Health Service, which incorporated the Southern Area Health Service, initiated an external review by Dr Robert Porter of the credentialing and appointment processes for senior medical officers. In his report dated March 2008, Dr Porter noted that the Greater Southern Area Health Service systems allow doctors' registration to be checked electronically. It is not clear from the report whether the system allows only for the existence of current registration to be verified or if it also results in verification of any conditions attaching to registration. The latter is obviously necessary. Greater Southern Area Health Service provided to the Inquiry a list of improvements in recruitment since the amalgamation in 2005. The list states that all registrations, including conditions, are checked on the Medical Board website prior to appointment and re-appointment. Verification is carried out by telephone if the Medical Board's website is temporarily unavailable.
- 7.18 Dr Mortimer said in a letter to the HCCC in 2003 that independent checks were carried out from 2003 for any doctor with conditional registration.²⁷⁰ In my view such independent checks should not be limited to doctors who disclose conditional registration. Independent checks should be routinely performed with respect to the registration of all doctors that apply to work within a public health organisation in any capacity.
- 7.19 Given the availability of registration information on the Medical Board's website, such checks do not impose an administrative burden that would outweigh the benefit to be gained from avoiding a situation in which an inadequately qualified medical practitioner is recruited within the public health system. Of course, it can be expected that the large majority of doctors will provide accurate information and verification will simply confirm that information.

Documentation for the credentialing and appointment processes

- 7.20 In my view, it is important that each of the members of the Credentials Committee (now called the Credentials (Clinical Privileges) Subcommittee), the Medical and Dental Appointments Advisory Committee, and any interview subcommittee, as well as the final decision-maker have access to the candidate's written application and any supporting documentation in full.

- 7.21 When it appointed Dr Reeves, I have found that the Southern Area Health Service followed the general practice applying at the time which did not include a requirement that the Director of Medical Services distribute to each member of the Credentials Committee, the Appointments Committee and the Board the application and supporting documentation of the candidates. No policy directive required that such documentation be provided.
- 7.22 I fail to see how a person's application and credentials can be properly assessed without each member of the committee seeing the documentation which comprised the application. Providing that documentation to each committee member minimises the chance that potentially important matters are overlooked or disregarded, such as a gap in the person's curriculum vitae or a hint that the person has an adverse disciplinary history. Providing each member of the committee with the application documentation should also increase the sense of collective responsibility on the part of committee members for the decision at hand.
- 7.23 The current policy relating to the delineation of clinical privileges for visiting practitioners and staff specialists sets out the sources of information and documentation that assist in determining a person's credentials.²⁷¹ It also states that the Credentials (Clinical Privileges) Subcommittee needs to have information about the delineated role of the facilities, the position advertised and the potential scope of privileges to be granted. The policy requires the Credentials (Clinical Privileges) Subcommittee to be provided with evidence of the practitioner's continuing medical education. With these exceptions, there is no clear requirement as to the type of documentation that each member of the Credentials (Clinical Privileges) Subcommittee should have before them when considering the applicant for clinical privileges. In my view, it should be clearly stated that each member of the Credentials (Clinical Privileges) Subcommittee should be given the applicants' curriculum vitae and all other documentation submitted in support of the application.
- 7.24 The current policy applying to the appointment of visiting practitioners requires the interview body, whether it be the Medical and Dental Appointments Advisory Committee or an interview subcommittee established by the appointments committee, to have access to copies of the advertisement, the position description, the criteria for appointment, the applications and the written advice of the Credentials (Clinical Privileges) Subcommittee.²⁷² Current policy also lists provides a checklist of information that should be provided to the Medical and Dental Appointments Advisory Committee.²⁷³ That checklist includes such documents as the decisions of any interview panel and the Credentials (Clinical Privileges) Subcommittee, including their reasons for decision, but does not refer to the applicant's curriculum vitae and supporting documentation. In my view, it should do so as a matter of obligation.
- 7.25 The policy also requires the final decision-maker to be apprised of all the relevant material that was before the Medical and Dental Appointments Advisory Committee, including the advice and recommendations of any interview subcommittee and the Credentials (Clinical Privileges) Subcommittee.

Recommendation 4: NSW Health ensure that it has policies applying to the appointment of senior medical officers (that is, visiting medical practitioners and staff specialists), which are implemented by all public health organisations, that require every member of each of (a) the Credentials (Clinical Privileges) Subcommittee, (b) the Medical and Dental Appointments Advisory Committee, (c) any interview subcommittee and, as well, (d) the final decision-maker, to have access to the entire written application, including any supporting documentation, of each applicant under consideration by the relevant committee or the final decision-maker.

Composition of credentials and interview committees

- 7.26 In my view, it is important that where a specialist appointment is being considered, the Credentials (Clinical Privileges) Subcommittee (as the credentials committee is referred to in current policy) include a medical practitioner from the specialty or sub-specialty in which privileges are sought.
- 7.27 Current policy contains a recommendation that a practitioner from the relevant discipline be included (that is, a specialist nominated by the relevant College) or, where it is not possible for a College representative to be a member, that relevant information be sought from the College.²⁷⁴ The Model By-laws to be adopted by area health services²⁷⁵ require the inclusion of at least 2 members on the Medical and Dental Appointments Advisory Committee, who are medical practitioners (where a medical appointment is in question), and any other medical practitioner whose inclusion is considered to be necessary by that committee.²⁷⁶ In my view, the inclusion of a medical practitioner from the specialty or sub-specialty in which privileges are sought should be mandatory for specialist positions. I do not think it is sufficient to require the inclusion of a practitioner from the general discipline, given modern practice covers a broad range of specialists which may not be reflected by membership or fellowship of a College.
- 7.28 The role of the credentials committee is to match the required credentials for the particular position with the applicant's clinical skill and capacity. In my view, it is important in every case that a person with the relevant specialist qualification be included in the decision-making process. The assessment of credentials is, at the end of the day, an assessment about the applicant's technical qualifications deriving from formal qualifications, training, experience and competence. In my view, an assessment of those qualifications by a person within the same specialty is an invaluable contribution to the committee's overall assessment of the applicant's credentials and the delineation of clinical privileges.
- 7.29 I also consider that a medical practitioner from the specialty or sub-specialty in which privileges are sought should be included in the Medical and Dental Appointments Advisory Committee, where it functions as the interview and selection committee, or any interview or selection subcommittee to which the interviewing or selection functions are delegated by the Medical and Dental Appointments Advisory Committee. The current policy states that any interview subcommittee "may" include a representative from the relevant college for a specialist position.²⁷⁷ The Model By-laws to be used by area health services require a representative of an appropriate professional medical college or body whose discipline is relevant to be included in the Medical and Dental Appointments Advisory Committee only where the Chief Executive considers it necessary, following consultation with the 2 representatives of the Medical Staff Council who are required to be included in the committee.²⁷⁸ In my view, the inclusion of a practitioner from the relevant specialty or sub-specialty should not be discretionary.
- 7.30 It is the interview subcommittee's task (or that of the Medical and Dental Appointments Advisory Committee, if there is no interview subcommittee) to select applicants for interview, undertake reference checks, verify credentials, interview suitable applicants and make recommendations to the Medical and Dental Appointments Advisory Committee in relation to the appointment. A medical practitioner who is closely familiar with the area of specialty and expertise required for the job will be better placed to assess the candidate's credentials and suitability for the position. That person is also in a position to ask technical questions and to test whether the interviewee has up to date knowledge about matters specific to the specialty, such as current initiatives of the relevant College. Such questioning has the potential to expose a weakness in the application that may not otherwise be readily apparent. In my view, inclusion of a

practitioner from the relevant specialty or sub-specialty will increase the chances that the most suitable applicant is successful. The same considerations apply to the inclusion of a fellow of the College of General Practitioners.

- 7.31 Of course, a medical practitioner from the discipline in which privileges are sought who is appointed to be on the credentials committee and/or the Medical and Dental Appointments Advisory Committee (or any interview subcommittee) for the purpose of considering a particular matter or matters would be a member of such committee only for the period or periods during which that matter or matters is under consideration.

Recommendation 5: NSW Health ensure that it has policies applying to the appointment of senior medical officers, which are implemented by all public health organisations, that require a medical practitioner from the specialty or sub-specialty in which privileges are sought to be included on each of (a) the Credentials (Clinical Privileges) Subcommittee and (b) the interviewing committee in respect of the appointment of a person as a senior medical officer.

Recommendation 6: NSW Health ensure that its model by-laws made pursuant to the *Health Services Act 1997* require a medical practitioner from the specialty or sub-specialty in which privileges are sought to be included on each of (a) the Credentials (Clinical Privileges) Subcommittee and (b) the interviewing committee in respect of the appointment of a person as a senior medical officer.

Reference checking

- 7.32 The applicable policy of the Department of Health in 2002 required a structured approach to reference checking.²⁷⁹ No such requirement was set out in the draft local policy *The Process of Appointing Visiting Medical Practitioners*. Nor did the draft local policy contain a minimum number of referees to be contacted, while the departmental policy required applicants to provide at least 2 referees who could be contacted after interview.
- 7.33 In 2002, there was therefore a deficiency in the implementation by the former Southern Area Health Service of the existing Department of Health policy regarding reference checking. There was, however, no Department of Health policy applying specifically to the recruitment of visiting practitioners.
- 7.34 The documents submitted to the appointments committee that interviewed Dr Reeves show that referee checks had been carried out in relation to a candidate for another position, that of VMO anaesthetist. The referees' comments in response to the same 5 questions were typed and circulated to the appointments committee. *The Process of Appointing Visiting Medical Practitioners* did not require that such a structured approach reference checking be carried out or that it be carried out before the appointments committee had met. It was, however, good practice.
- 7.35 The 1997 Department of Health policy requiring a structured approach to reference checking is no longer current. The policies replacing it do not contain a specific requirement for structured reference checking.²⁸⁰ However, since 2005, a new policy applying specifically to the appointment of visiting practitioners has required the appropriate person on the interview body to verify referee reports or to contact nominated referees for their comments at the completion of the interview and to keep a record of the comments.²⁸¹ That policy requires public health organisations to develop an information package for each appointment that should refer to the need for the

candidate to nominate at least 2 referees. That policy therefore goes a significant way to requiring structured reference checking.

- 7.36 An internal audit of the personnel files of 30 medical and dental practitioners carried out by the Clinical Governance Unit of the Greater Southern Area Health Service in 2007 found that referee reports were included in 15 out of 30 files audited. In 8 out of 30 files, referee reports were found that were appropriately completed. The files were randomly selected from new and renewed applications for credentials over the previous 2 years.
- 7.37 In my view, the weakness in the system with regard to referee checking is likely to be in the area of implementation of policy. It would assist if the relevant policies²⁸² clearly set out that a structured approach to reference checking means either:
- obtaining written referee reports addressing specified questions; or
 - asking at least 2 referees for their responses to specified questions and recording the responses.
- 7.38 In my view, the specified questions should require questions intended to elicit:
- how the referee knows the practitioner;
 - the referee's views about the quality of the practitioner's work;
 - whether the referee knows of any problems with the practitioner's skill or professional behaviour;
 - whether the referee knows of any reason why the appointment ought be made.
- 7.39 The addition of the matters in paragraphs 7.37 and 7.38 will assist in ensuring that there is a policy for structured reference checking which is capable of implementation.
- 7.40 This material ought be placed before the final decision maker.
- 7.41 Chief Executives are ultimately responsible for ensuring the observance of policy directives²⁸³. It is clear that compliance with these policies is essential and needs to be continually monitored. It is unrealistic to expect that a Chief Executive will have the time to search out adequate compliance before approving an appointment.
- 7.42 An effective process for ensuring that the necessary steps are carried out is to use a verified checklist which designates the person or unit within the health service with responsibility for carrying out the relevant task and contains the signature of the person who has verified that the task has been completed. That list can then be submitted to the Chief Executive or person to whom the appointment function has been delegated. This process would ensure that all applicable policies have been followed and that all necessary steps have been completed before an appointment is made. This should have the effect of securing effective implementation of all existing policies.

Recommendation 7: NSW Health ensure that it has policies applying to the appointment of senior medical officers, which are implemented by all public health organisations, that require a structured approach to reference checking, meaning either (a) that written referee reports are obtained from at least 2 referees addressing specified questions or (b) that verbal referee reports are obtained from at least 2 referees in response to specified questions and recorded in writing.

Recommendation 8: NSW Health ensure that there are in effect procedures which require verified compliance with all relevant policies prior to the appointment of a visiting medical practitioner or staff specialist.

Checking of past performance and disciplinary history

- 7.43 At the time of Dr Reeves' appointment the applicable policy reserved the right for the health service to contact an applicant's previous employer(s) and any institution(s) at which previous appointments had been held.²⁸⁴ Dr Reeves authorised the Board, Medical and Dental Appointments Advisory Committee and Credentials Committee to make such contact in his written application.
- 7.44 There was however no clear policy requirement that such checks be made or statement about whose responsibility it was to carry out that task. As Director of Medical Services, responsibility fell to Dr Arthurson to make arrangements for meetings of the appointments and credentials committees. He was not however either the convenor or a member of either committee.
- 7.45 It is clear to me that the failure to verify Dr Reeves' past performance and his claims in relation to employment history meant that his formal qualifications, experience and clinical competence were not adequately assessed. As a result, the opportunity may have been lost for the Credentials Committee and the Medical and Dental Appointments Advisory Committee to discover Dr Reeves' disciplinary history and the true scope of the restrictions on his entitlement to practise medicine in New South Wales. However I consider that this was the result of a deficiency in the applicable policies and practices of NSW Health in 2002, rather than a failure of any individual to perform his or her functions in a reasonable manner.
- 7.46 The current policy applying to the appointment of visiting practitioners requires the appropriate person on the interview body to obtain information about the applicant's past performance in accordance with the authority provided by the applicant at the time of the application.²⁸⁵ The *Health Services Regulation 2003* requires the applicant for a position as visiting practitioner to provide such an authority to the Medical and Dental Appointments Advisory Committee in writing at the time of application.²⁸⁶ Past performance is defined under current policy to include matters such as professional performance and peer recommendation.
- 7.47 At the time of application, the applicant is also required to authorise the public health organisation to obtain relevant information from the HCCC and registration authorities relating to any conditions placed on practice, the nature of any outstanding complaints and whether there is any pending disciplinary action against the applicant.
- 7.48 Requesting information about the past performance and disciplinary history of a medical practitioner is an important part of the filtering process. Assuming the authorisations provided by an applicant are actually sought and appropriately acted upon, a situation wherein a public health organisation knows virtually nothing about the disciplinary history, and the complaints that gave rise to that disciplinary history, of a medical practitioner should not recur. The key to this process is the diligence of those tasked with its implementation.

Proposed Service Check Register

- 7.49 The New South Wales Department of Health has informed the Inquiry that it plans to introduce a Service Check Register. The Register will allow public health organisations to be informed about certain aspects of the disciplinary record of employees and visiting practitioners during the recruitment process and in the event that the public health organisation is considering or reviewing disciplinary action against such persons. The Register will record information about a person if the person:
- is currently suspended from duties;

- is dismissed from the public health system as a result of disciplinary action;
 - has conditions or restrictions placed on his or her duties or practice as a result of a disciplinary process of the Department of Health or a registration board; or
 - resigns from his or her position before a disciplinary process or investigation is completed where, if proven, the action would have led to termination or conditions being imposed on the person's duties or practice.
- 7.50 The Department of Health has told the Inquiry that the Register will contain information identifying the relevant employee or visiting practitioner and, where relevant:
- a statement that the person is suspended or that conditions or restrictions have been placed on the person's duties or practice;
 - the outcome of any serious disciplinary action against the person where the complaint is proven;
 - the contact details of an authorised person in the public health organisation who can provide further details.
- 7.51 The Department of Health will grant access to the Register only to authorised personnel within the Department and the public health organisations. The Register is intended to be in operation by the end of 2008. It is intended to be an addition to and not to replace other screening processes required to be carried out under applicable policies.
- 7.52 Because the details as to how the Register will function are still under review, I am not able to express a firm view about its effectiveness. However, I make the following comments.
- 7.53 The Register will be a worthwhile tool for screening the credentials of employees and visiting practitioners if it improves the flow of relevant information to the appropriate people within public health organisations. It is important that the information contained in the Register does not unintentionally mislead the enquirer about the outcome of a disciplinary process or the extent of any restrictions applying to a person's professional duties and practice by, for example, suggesting to the reader that it contains an exhaustive and up-to-date account of information where that is in fact not the case. The Register should state with clarity the extent of information contained within it and the most recent date on which the information was updated. For example, the term "serious disciplinary action" should be clearly defined. It would seem that information about conditions or restrictions on a person's duties or practice is to be limited to a statement about the existence of conditions or restrictions. In my view, the Register should also set out the content of those conditions or restrictions or, where that is not possible (for example, if they are impairment conditions that cannot be disclosed), it should provide sufficient information, particularly with regard to the origin of the conditions or restrictions, to allow further enquiries to be made.
- 7.54 Given that the Register is intended to centralise information, its effectiveness will also depend on the efficient flow of information between the various public health organisations and registration bodies, on the one hand, and the Department of Health, on the other hand. There is a potential for the Register to contain incomplete and misleading information if area health services do not provide the Department of Health with the information the Register is intended to cover promptly and comprehensively. It will be necessary for the Department of Health to create policies requiring public health organisations to give it notice of the relevant information. Part of the information to be included in the Register also emanates from the registration bodies, such as the New South Wales Medical Board. Public health organisations are required to be notified about certain findings made under the registration legislation, which would facilitate notification to the Department of Health (the *Health Services Act 1997* contains

provisions requiring visiting practitioners and employees who have a finding of unsatisfactory professional conduct or professional misconduct made against them to notify the chief executive of the organisation (subsections 99(2), 117(2)). It seems to me, however, that it will be necessary for there to be a thorough review of the systems currently in place, pursuant to legislative and policy requirements, for notifying information of the kind to be contained in the Register.

- 7.55 Given that the order of the Professional Standards Committee in 1997 banning Dr Reeves from obstetric practice was the result of a disciplinary process under the *Medical Practice Act*, the Register would have captured that information if it had been functioning in 2002.

Temporary locum appointments

- 7.56 Pursuant to the *Health Services Regulation 2003*, the temporary appointment of a visiting practitioner for a period of less than 6 months does not have to be referred to the Medical and Dental Appointments Advisory Committee. Nor is there any requirement for the position to be advertised or for the application to be made in writing together with a statement setting out the clinical privileges sought and an authority for the MDAAC to obtain information about the applicant's past performance.²⁸⁷
- 7.57 The Model By-laws to be used by area health services allow the medical administrator of a public health organisation to appoint a visiting practitioner or staff specialist to a position for a single period not exceeding 3 months, where the Chief Executive has delegated such a function to that position. Any exercise of the delegation is subject to the advice of the relevant Medical and Dental Appointments Advisory Committee if such advice or recommendation is required.²⁸⁸
- 7.58 The current policy relating to the delineation of clinical privileges for visiting practitioners and staff specialists notes that a temporary appointment may be made by the medical administrator for a single period not exceeding 6 months, where the governing body has delegated such power.²⁸⁹ This does not accord with the Model By-laws in terms of the duration of temporary appointments permitted to be made by delegation to the medical administrator (howsoever that position is described within the area health service).
- 7.59 That policy requires the delegate to conduct the same checks as required by the appointment process and the Credentials (Clinical Privileges) Subcommittee before a locum is appointed. A written contract is required that delineates the clinical privileges allowed.
- 7.60 All temporary appointments are subject to:²⁹⁰
- The qualifications and experience of the visiting practitioner being suitable to the circumstances;
 - An appropriate credentialing and delineation of clinical privileges procedure being carried out;
 - The vetting of the applicant, including criminal records checks;
 - A written agreement between the public health organisation and the visiting practitioner.
- 7.61 The current policy does not specifically require referee checks to be made. In my view, it is important to clarify that referee reports are required and to stipulate who has responsibility for obtaining the reports.
- 7.62 This Inquiry has received a number of submissions which draw attention to the challenges presented to the NSW public health system by the frequent use of locum

doctors pursuant to temporary appointments. Issues raised include cost, quality and safety of clinical care and legal and administrative issues. I consider this to be an important issue for inquiry by the Special Commission and propose to examine the issue in detail in my final report.

Recommendation 9: NSW Health ensure that it has policies applying to the temporary appointment of visiting medical practitioners, which are implemented by all public health organisations, that require such appointments to be subject to the same screening requirements as for fixed term appointments, including appropriate structured referee checks.

Management of complaints and obstetric ban by the Southern Area Health Service

Management of complaints about Dr Reeves

- 7.63 In 2002, the applicable NSW Health policy²⁹¹ on complaints had been implemented in a local policy by the Southern Area Health Service.²⁹² It required complaints or concerns to be managed in accordance with a structured process, depending on the level of seriousness. Level 1 complaints required a review of the clinician's performance to be undertaken. Level 2 complaints required an investigation. Level 3 complaints required investigation and communication with relevant statutory bodies. The CEO was required to be advised of Level 2 and 3 complaints and concerns. The policies defined the 3 levels of complaint.
- 7.64 The applicable policy set timeframes for the resolution of complaints. Level 1 review should have been completed within 4 to 8 weeks (other than ongoing monitoring) and Level 2 investigations should have been completed within a reasonable predetermined timeframe of generally 4 to 8 weeks. Level 3 matters required immediate action to notify the relevant statutory body and ensure that public health and safety was not compromised. Dr Robinson gave some general evidence about the complaint reporting system that was consistent with the relevant policy.²⁹³
- 7.65 The complaint about Dr Reeves' relationship with nursing staff was notified to the Director of Medical Services 3 days after the nurses' concerns were expressed on 28 October 2002. However there is no evidence that the meetings on 6 November 2002 with the nursing staff and Dr Reeves were the subject of a report to the General Manager, as required by a Level 1 review, or to the CEO, as required by a Level 2 matter. The files of the former Southern Area Health Service contain an unsigned letter dated 19 December 2002 from Dr Arthurson to Dr Reeves about the meetings. The letter outlined the concerns raised by both the staff and Dr Reeves and noted that "the nursing staff had a right to expect that there will be no victimisation or reprisal as a result of their complaints". There is no mention of the order banning Dr Reeves from obstetrics. Dr Arthurson does not recall whether or not that letter was sent.
- 7.66 Dr Arthurson gave evidence that he considered it necessary at the relevant time to continue to deal with the complaints that had arisen in relation to Dr Reeves' relationship with the nursing staff. There was no immediate intention to terminate his services as a gynaecologist.²⁹⁴ Management of the issue regarding Dr Reeves' professional relationships was being treated as a separate issue to the obstetric issue.

- 7.67 It is clear from the events, however, that management of the 2 issues merged. In an email to the CEO on 10 January 2003, Ms Dwyer, General Manager of the Bega Valley Division expressed concern that, although staff had been advised that Dr Reeves no longer had clinical privileges in obstetrics, they were in effect expected to monitor him due to his continued presence in the hospitals. The email referred to Dr Reeves' aggressive behaviour towards nursing staff and the incident in which a member of the nursing staff had received a laceration during an operation. That incident had occurred over 2 months before Ms Dwyer's email. Ms Dwyer recommended that Dr Reeves be temporarily suspended in order to ensure a safe working environment.
- 7.68 The email from Ms Dwyer is the only evidence of a complaint about Dr Reeves' professional behaviour having been escalated to CEO level. The complaint was, however, one aspect of the wider discussions between Dr Mortimer, Ms Dwyer and Dr Robinson about managing the issue that had arisen in relation to Dr Reeves' obstetric practice.
- 7.69 Dr Robinson does not recall receiving any formal complaints about Dr Reeves' professional performance, in either the practice of gynaecology or obstetrics.²⁹⁵ Dr Robinson gave evidence that she was aware from Dr Arthurson that Dr Arthurson had attended either Bega or Pambula Hospital to speak with Dr Reeves about his communication with the nursing staff in November. Of course, Dr Robinson had also been notified on or about 14 November 2002 of the restriction on Dr Reeves' right to practise obstetrics.

Management of the obstetric ban

- 7.70 The discovery that Dr Reeves was not entitled to practise obstetrics on 14 November 2002 clearly required a Level 3 response. It answered the description of being both an "external event relevant to performance" and a "serious concern by colleagues re health and safety of patients", as set out in the policy.²⁹⁶ While the Chief Executive Officer was notified about the complaint in accordance with the policy, there is no evidence that the Director-General of the Department of Health was also notified as required.
- 7.71 The policy also required the Southern Area Health Service to take action that reflected its "obligation to ensure that appropriate care and treatment of an adequate standard was provided to patients and clients".
- 7.72 In the period between 14 November and 9 January 2003, it is clear that appropriate steps were not taken to prevent Dr Reeves from practising obstetrics.
- 7.73 Dr Arthurson gave evidence that in November and December 2002, he relied on the Medical Board's letter to Dr Reeves confirming the instruction not to practise obstetrics.²⁹⁷ Dr Arthurson had also received an undertaking from Dr Reeves that he would cease all obstetric practice. Dr Arthurson had spoken with the Chief Executive Officer. It would have been good practice for Dr Arthurson to confirm the instruction, and Dr Reeves' undertaking to comply with it, in writing. Given the sequence of events, however, it is most unlikely that such a written instruction would have prevented Dr Reeves from engaging in obstetric practice in December 2002 and January 2003 on the relevant occasions.
- 7.74 The Southern Area Health Service took appropriate action in closing the obstetric service at Pambula District Hospital on 14 November 2002 and obtaining interim emergency obstetric cover from The Canberra Hospital.²⁹⁸ Dr Reeves nevertheless attended to 2 obstetric patients in Pambula District Hospital on 3 and 8 January 2003

and treated another 3 patients at Bega District Hospital on 9 and 20 December 2002 and on 9 January 2003.

- 7.75 Dr Arthurson gave evidence that he did not realise that there was a problem with ensuring Dr Reeves complied with the instruction until he returned from leave in January 2003.²⁹⁹ Dr Mortimer did not learn about the problem until 7 January 2003 when, in his capacity as acting Director of Medical Services during Dr Arthurson's period of leave, he received Mr Toft's incident report.
- 7.76 It is clear from the circumstances that the only effective way to enforce the condition on Dr Reeves' practice would have been to publish the condition, and the consequent limitation on Dr Reeves' clinical privileges, as widely as possible within both Bega and Pambula District Hospitals and also to all of the visiting practitioners who had appointments to both of the Bega Valley hospitals. Even then, Dr Reeves remained entitled to practise gynaecology and therefore to see patients in private. This entitlement gave him the opportunity to engage in obstetric practice and had the potential to inhibit his colleagues from observing the nature of his practice. Nevertheless, a written communication to staff about the extent of Dr Reeves' clinical privileges at an early stage in the management of the issue would have minimised the opportunity for Dr Reeves to flagrantly defy the order of the Professional Standards Committee.
- 7.77 Although more robust steps could have been, and ought to have been, taken by the Area Health Service, in my view Dr Robinson, Dr Arthurson and Dr Mortimer could not have expected the level of defiance that Dr Reeves would show, despite the express directions given to him, and his undertakings to both the Medical Board and Southern Area Health Services that he would adhere to them. Medical practitioners have a great deal of independence. There is an expectation within the health system that they will act responsibly and monitor their own practice with the interests of their patients at the forefront. It is not appropriate, or even, possible for their colleagues to monitor every aspect of their work.
- 7.78 It is a natural consequence of this inevitable degree of trust which is placed in medical practitioners that any breach of that trust is intrinsically a very serious matter. All public health organisations and the various regulatory authorities need to exercise continuing vigilance to detect such breaches and to ensure that such breaches, when detected, attract condign punishment.

Current relevant policy

- 7.79 Current policy relating to the delineation of clinical privileges for visiting practitioners and staff specialists³⁰⁰ makes clear that clinical privileges are part of the conditions of a practitioner's appointment and are automatically terminated as part of any termination of appointment. It draws attention to the possible need for a public health organisation to immediately suspend privileges in circumstances where the appointment has not been formally terminated. It refers to the situation where the registration authority has placed conditions on registration which prevent the practitioner from legally undertaking the relevant clinical practice. The policy notes that it would also be necessary for the public health organisation:

to consider with at the time of suspension, or subsequently, appropriate action in respect of the practitioner's ongoing appointment.

- 7.80 Section 105 of the *Health Services Act 1997* requires the public health organisation to give notice in writing to the practitioner of any decision to reduce the practitioner's

clinical privileges or to suspend or terminate the appointment, together with the reasons for making the decision, within 14 days of the date of making the decision. The visiting practitioner has a right of appeal in these circumstances.

- 7.81 The provisions of section 105 were in operation in November 2002. In the case of Dr Reeves, because it was known that he was not legally entitled to practise obstetrics, no formal review of his clinical privileges was conducted by the Area Health Service. There was, however, a de facto reduction in his clinical privileges by reason of the direction to him not to practise obstetrics. As noted earlier, the Area Health Service gave this direction in November 2002 but did not put it in writing until 10 January 2003.
- 7.82 The current policy recommends that a review of clinical privileges should take place in certain specified circumstances. This includes the situation where the outcome of an investigation of a complaint indicates that a review is appropriate. The discovery of the ban on Dr Reeves' right to practise obstetrics would have warranted a formal review of his clinical privileges. The current policy was not, however, in existence in 2002.
- 7.83 The current policy recommends that information regarding the clinical privileges allowed to any practitioner, either appointed to or employed by a public health organisation, should be available to other practitioners, health organisations and consumers on request. It requires public health organisations to develop detailed local policies on how this should be managed. In my view, there should be a requirement that any reduction in the clinical privileges of a practitioner be notified to relevant staff within the relevant health service, rather than simply available on request.
- 7.84 The method of notification may take a variety of forms. It may involve a memorandum to staff or other information bulletin which is physically distributed to the relevant staff within the health service in question. It may be electronic or else by public notice. It is not possible to be prescriptive.
- 7.85 As noted by current policy, local management of information collected, used or documented, as part of the process must comply with relevant legislation for privacy and records management.

Recommendation 10: NSW Health ensure that there are in effect procedures which require any reduction in the clinical privileges of a medical practitioner which results from the imposition of conditions or orders on the practitioner's registration to be promptly notified to clinical staff at any hospital for which the medical practitioner has been granted clinical privileges.

- 7.86 My findings in relation to the performance of the functions of the individuals acting on behalf of the former Southern Area Health Service are as follows.

Dr Robinson

- 7.87 On or around 14 November 2002, Dr Robinson became aware about the order requiring Dr Reeves to cease the clinical practice of obstetrics. Dr Robinson failed to take sufficient steps to restrict Dr Reeves' right to practise obstetrics at both Pambula and Bega District Hospitals. Such steps would have included one or more of the following:
- proceeding to a suspension, either of Dr Reeves' obstetric rights or his rights at the Bega and Pambula District Hospitals generally;
 - ensuring that relevant staff at the Bega and Pambula District Hospitals were told about the restriction so as to minimise the opportunity for Dr Reeves' to practise obstetrics;

- monitoring the provision of obstetric services at Bega and Pambula District Hospitals so as to ensure that Dr Reeves did not perform obstetric services, by, for example, liaising with Dr Mortimer, Dr Arthurson, Mr Raymond Toft and any relevant managerial staff at the 2 hospitals;
- writing to Dr Reeves to confirm the instruction not to practise obstetrics in any situation and seek his written undertaking to comply with the order not to practice obstetrics.

7.88 However these failures were the result of Dr Robinson's legitimate concern for the well-being of Dr Reeves' gynaecological patients on the one hand and his persistent tactic of misleading the Area Health Service executives on the other.

Dr Arthurson

7.89 Prior to appointing Dr Reeves to a temporary appointment as specialist obstetrician gynaecologist for the period 10 – 13 April 2002, Dr Arthurson failed to obtain any referee report in relation to Dr Reeves in accordance with good practice and the procedure set out in the Southern Area Health Service policy *The Process of Appointing Visiting Practitioners* (June 2001), albeit that policy had not been formally endorsed by the board of the Southern Area Health Service.

7.90 On or within a reasonable period after he became aware on 14 November 2002 about the order requiring Dr Reeves to cease the clinical practice of obstetrics, Dr Arthurson failed to take sufficient steps to restrict Dr Reeves' right to practise obstetrics at both Pambula and Bega District Hospitals. Such steps would have included one or more of the following:

- communicating with relevant staff at the Bega and Pambula District Hospitals about the restriction so as to appropriately restrict Dr Reeves' right to practise obstetrics and ensure that public health and safety were not compromised;
- monitoring the provision of obstetric services at Bega and Pambula District Hospitals so as to ensure that Dr Reeves did not perform obstetric services, by, for example, liaising with Dr Mortimer, Mr Raymond Toft and any relevant managerial staff at the two hospitals;
- writing to Reeves to confirm the instruction not to practise obstetrics in any situation, with the exception of a dire emergency of the kind referred to in the letter to Dr Arthurson from the Medical Board dated 14 November 2002, and confirm the undertaking given by Dr Reeves to comply with the order not to practise obstetrics.

Dr Mortimer

7.91 The formal qualifications, experience and clinical competence of Dr Reeves were not adequately assessed as a result of insufficient verifications about his past employment. NSW health policy *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct* required a structured approach to reference checking. It would have been good practice for Dr Mortimer to adopt a structured approach to reference checking, by contacting more than one referee, asking referees specific questions, recording their responses, and submitting referee reports to the credentials and appointments committee.

7.92 As a consequence of inadequate reference checking, the opportunity may have been lost for the Medical and Dental Appointments Advisory Committee to discover Dr Reeves' disciplinary history and the true scope of the restrictions on his entitlement to practise medicine in New South Wales.

- 7.93 However, the applicable policy of NSW Health did not specify the tasks associated with reference checking that it would have been good practice for Dr Mortimer to carry out. Further, the Southern Area Health Service had not translated the obligation to adopt structured reference checking into local policy.

The benefit of hindsight

- 7.94 My findings about the relevant staff of the former Southern Area Health Service are made with the benefit of hindsight. Indeed, the comprehensive recitation of all the facts and circumstances in this report provide a clear basis for such findings. However, the reasonableness of the conduct of these individuals is not something which can or ought be judged with the benefit of hindsight. To do so, would be to impose a counsel of perfection for an individual which few if any individual could withstand.
- 7.95 I, specifically, do not find that the conduct of these individuals was unreasonable or inappropriate. That is because I find myself quite unable to ignore the bias of hindsight³⁰¹ which arises by reason of my investigation and the exercise of fact finding in which I have engaged.

²⁶⁵ Transcript 129.24.

²⁶⁶ Transcript 126.37 ff (Graeme Reeves).

²⁶⁷ Transcript 149.8.

²⁶⁸ *Appointment of Visiting Practitioners – Policy for Implementation PD 2005/496, Delineation of Clinical Privileges for Visiting practitioners and Staff Specialists – Policy for Implementation PD 2005/497, Performance Review of Visiting Practitioners – Policy for Implementation, PD 2005/498, Appointment of Staff Specialists – Policy for Implementation PD 2005/500.*

²⁶⁹ Mandatory policy directive *Delineation of Clinical Privileges for Visiting practitioners and Staff Specialists PD 2005/497, Appendix A.*

²⁷⁰ Transcript 206; transcript 305.20 (Dr Robinson).

²⁷¹ *Delineation of Clinical Privileges for Visiting practitioners and Staff Specialists – Policy for Implementation PD 2005/497.*

²⁷² *Appointment of Visiting Practitioners – Policy for Implementation PD 2005/496, page 12.*

²⁷³ Appendix C, *Delineation of Clinical Privileges for Visiting practitioners and Staff Specialists – Policy for Implementation PD 2005/497.*

²⁷⁴ *Delineation of Clinical Privileges for Visiting practitioners and Staff Specialists – Policy for Implementation PD 2005/497.*

²⁷⁵ Section 39, *Health Services Act 1997.*

²⁷⁶ Clause 34(1), Model By-laws, as per order of the Director-General dated 5 December 2006.

²⁷⁷ *Appointment of Visiting Practitioners – Policy for Implementation PD 2005/496.*

²⁷⁸ Clause 30(e)(ii), Model By-laws, as per order of the Director-General dated 5 December 2006.

²⁷⁹ *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct PD 2005_109, previously Circular 97/80.*

²⁸⁰ PD 2008_029 - *Employment Screening Policy* replaced PD 2005_109 *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct.*

²⁸¹ *Appointment of Visiting Practitioners – Policy for Implementation PD 2005/496.*

²⁸² *Appointment of Visiting Practitioners – Policy for Implementation PD 2005/496; Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct PD 2005_109, Circular 97/80.*

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- ²⁸³ As set out in PD 2005_481, *Policy, Guideline and Information Bulletin Distribution System for the NSW Department of Health*.
- ²⁸⁴ *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct* PD 2005_109, Circular 97/80.
- ²⁸⁵ *Appointment of Visiting Practitioners – Policy for Implementation* PD 2005/496.
- ²⁸⁶ Clause 5(2)(b).
- ²⁸⁷ Clause 5(4)(b), *Health Services Regulation 2003*.
- ²⁸⁸ Clause 29(2), Model By-laws, as per order of the Director-General dated 5 December 2006.
- ²⁸⁹ *Delineation of Clinical Privileges for Visiting practitioners and Staff Specialists – Policy for Implementation* PD 2005/497.
- ²⁹⁰ *Appointment of visiting practitioners: Policy for Implementation*, PD 2005_496.
- ²⁹¹ *Guideline on the management of a complaint or concern about a clinician* PD 2005_586, issued 2001.
- ²⁹² *Area Policy for the management of a complaint or concern about a clinician*, May 2002, signed by CEO on 7 August 2002 (version no. LM/HR/5/002/02).
- ²⁹³ Transcript 343.34 (Dr Robinson).
- ²⁹⁴ Transcript 263 (Dr Arthurson).
- ²⁹⁵ Transcript 343.10; transcript 344.25 (Dr Robinson).
- ²⁹⁶ *Area Policy for the management of a complaint or concern about a clinician*, May 2002, signed by CEO on 7 August 2002 (version no. LM/HR/5/002/02).
- ²⁹⁷ Transcript 260.38 (Dr Arthurson).
- ²⁹⁸ Transcript 262.
- ²⁹⁹ Transcript 252.24.
- ³⁰⁰ *Delineation of Clinical Privileges for Visiting practitioners and Staff Specialists – Policy for Implementation* PD 2005/497.
- ³⁰¹ For a full discussion of the influence of hindsight bias, see *Human Error* by Professor J Reason, Cambridge University Press, 1990, pp 214-216.

Appendix 1

NEW SOUTH WALES

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

To Mr Peter Richard Garling SC.

By these Our Letters Patent, made and issued under the authority of the *Special Commissions of Inquiry Act 1983*, We hereby, with the advice of the Executive Council, authorise you as Commissioner to inquire into and report to Our Governor of the said State on the following matters concerning the delivery of acute care services in public hospitals in New South Wales:

1. any systemic or institutional issues in the delivery of acute care services in NSW public hospitals raised in submissions you receive that you consider appropriate for you to inquire into and recommend any changes which should be made to address them;
2. identify existing models of patient care used in the delivery of acute care services in NSW public hospitals with particular regard to case management including supervision of junior clinical staff, clinical note-taking and record-keeping, and communication between health professionals involved in the care of a patient;
3. recommend any changes which should be made to the existing models of patient care identified under paragraph 1 to improve the quality and safety of patient care in NSW public hospitals;
4. identify any systemic impediments to the implementation of changes recommended under paragraph 2;

ENTERED on Record by me, in REGISTER OF PATENTS, No. 99 Page 312, this 29th day of January, 2008


DIRECTOR GENERAL
DEPARTMENT OF PREMIER AND CABINET

5. recommend any changes which NSW Health should make to overcome any impediments identified under paragraph 3; and
6. recommend any changes which NSW Health should make to ensure that its workforce policies and practices support improved models of patient care.

You may have regard to developments arising from the National Health and Hospitals Reform Commission and other Commonwealth-State reforms in relation to Australian health care delivery, to the extent that they arise before the date for the delivery of your report.

You are to refer any individual patient complaints identified in the course of your inquiry to the Health Care Complaints Commission.

You may seek the advice of such eminent persons as you choose to engage who have expertise in any one or more of medical practice, nursing practice, allied health practice, hospital management and such other areas as you consider appropriate. If you so desire, you may engage any such eminent persons from other States or the Territories or from outside Australia. This does not limit your ability to employ any other assistance under section 13 of the *Special Commissions of Inquiry Act 1983*.

AND hereby establish a Special Commission of Inquiry for this purpose.

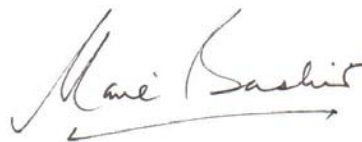
AND OUR further will and pleasure is that you do, as expeditiously as possible, but in any case on or before 31 July 2008, deliver your final report in writing of the results of your inquiry to the office of Our Governor in Sydney.

AND pursuant to section 21 of the *Special Commissions of Inquiry Act* it is hereby declared that sections 22, 23 and 24 shall apply to and in respect of the Special Commission the subject of these Our Letters Patent.

IN TESTIMONY WHEREOF, WE have caused these Our Letters to be made Patent and the Public Seal of Our State to be hereunto affixed.

WITNESS Her Excellency
Professor Marie Bashir,
Companion of the Order of
Australia, Commander of the
Royal Victorian Order, Governor
of the State of New South Wales
in the Commonwealth of
Australia.

Dated this 29th day of January 2008.



Governor

By Her Excellency's Command,

Premier. 



NEW SOUTH WALES

ENTERED on Record by me, in REGISTER OF PATENTS, No. 89 Page 513, this 30th day of January, 2008

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DIRECTOR GENERAL
DEPARTMENT OF PREMIER AND CABINET

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

To Mr Peter Richard Garling SC.

WHEREAS BY Letters Patent issued in Our name by Our Governor of Our State of New South Wales on 29 January 2008, WE appointed you as sole Commissioner to inquire into and report to Our Governor on various matters concerning the delivery of acute care services in public hospitals in New South Wales.

AND WHEREAS it is desirable that those Letters Patent be varied to correct cross references to certain paragraphs.

NOW THEREFORE WE do, by these Our Letters Patent issued in Our Name by Our Governor of Our said State, with the advice of the Executive Council, and pursuant to s6 of the *Special Commission of Inquiry Act 1983*, DECLARE that the Letters Patent constituting your Commission shall have effect as if the following paragraphs:

- “3. recommend any changes which should be made to the existing models of patient care identified under paragraph 1 to improve the quality and safety of patient care in NSW public hospitals;
- 4. identify any systemic impediments to the implementation of changes recommended under paragraph 2;
- 5. recommend any changes which NSW Health should make to overcome any impediments identified under paragraph 3; and”

were deleted and replaced with the following paragraphs:

- “3. recommend any changes which should be made to the existing models of patient care identified under paragraph 2 to improve the quality and safety of patient care in NSW public hospitals;
4. identify any systemic impediments to the implementation of changes recommended under paragraph 3;
5. recommend any changes which NSW Health should make to overcome any impediments identified under paragraph 4; and”

AND IT IS FURTHER DECLARED that these Letters Patent are to be read with the Letters Patent constituting your Commission.

Page 115

IN TESTIMONY WHEREOF, WE have caused, these Our Letters to be made Patent, and the Public Seal of Our State to be hereunto affixed.

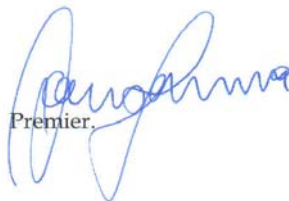


WITNESS Her Excellency
Professor Marie Bashir,
Companion of the Order of
Australia, Commander of the
Royal Victorian Order, Governor
of the State of New South Wales
in the Commonwealth of
Australia.

Dated this 30th day of January 2008.


Governor

By Her Excellency's Command,


Premier.

