

**IN THE MEDICAL TRIBUNAL OF NEW SOUTH WALES**

**THE MEDICAL PRACTICE ACT 1992**

DEPUTY CHAIRMAN: HIS HONOUR JUDGE J C McGUIRE  
MEMBERS: DR KENNETH ATKINSON  
DR MARINA VAMOS  
DR MAUREEN GLEESON, PHD

Nos. 40006/03; 40008/03; 40003/04

Dr GRAEME STEPHEN REEVES

Date: 23<sup>rd</sup> July, 2004

Proceedings

The proceedings being considered by the Tribunal involve:

- (a) An amended complaint by the Health Care Complaints Commission that Dr Reeves is guilty of unsatisfactory professional conduct and/or professional misconduct (“the complaint”).
- (b) An application by Dr Reeves pursuant to S.92 of the Act for a review of the conditions to which his registration is subject as a result of a Professional Standards Committee (PSC) hearing in 1997 (“the application”).

The findings and determination of the Tribunal in relation to the complaint are determinative of the matters raised in (b) and it is unnecessary to make separate findings and to give reasons therefore.

### The Amended Complaint of 6/5/04

The Health Care Complaints Commissions, 323 Castlereagh Street, Sydney, having consulted with the New South Wales Medical Board in accordance with s.51(1) of the Medical Practice Act, 1992 (“the Act”).

Hereby complains that Dr Graeme Reeves (“the practitioner”) of 34 Toalla Avenue, Pambula, NSW 2549 being a medical practitioner registered under the Act is guilty of unsatisfactory professional conduct and/or professional misconduct within the meaning of sections 36 and 37 of the Act, in that he has demonstrated a lack of adequate knowledge, judgment or care in the practice of medicine and/or engaged in improper or unethical conduct related to the practice of medicine.

### Particulars

1. On 21 July 1997 a Professional Standards Committee imposed an order on the practitioner’s practice that he cease the clinical practice of obstetrics.
2. On 3 January 2003 the practitioner breached the order in that he attended Patient A (see Schedule 1) in the labour ward at Pambula District Hospital, where he performed a vaginal examination, ruptured the membranes, inserted an intravenous (IV) cannula, and ordered the commencement of a Syntocinon infusion for the elective induction or the augmentation of labour.
3. On 9 January 2003 the practitioner breached the order in that he attended Patient B (see Schedule 1) at Bega District Hospital, where he performed an assessment at 36 weeks gestation.

4. Between 10 May 2002 and 20 December 2002 the practitioner breached the order in that he attended a total of 36 obstetric patients, providing 38 occasions of service, at Pambula District Hospital and Bega District Hospital, as set out in Schedule 2.
5. The practitioner failed to inform Southern Area Health Service (SAHS) during the recruitment process leading to his appointment by SAHS in April 2002 as a Visiting Medical Officer (VMO) Obstetrician and Gynaecologist, or at all, of the order on his practice, imposed on 21 July 1997, that he cease the clinical practice of obstetrics.

## Orders Sought

The Complainant seeks, pursuant to Section 64 of the Act, a finding that the practitioner is guilty of unsatisfactory professional conduct and/or professional misconduct in relation to his dealings with each of the patients and an order that he be deregistered.

## Unsatisfactory Professional Conduct

Section 36 of the Act sets out the matters which constitute unsatisfactory professional conduct including inter alia

- (c) any contravention by the practitioner of a condition to which he is subject:
  
- (m) “Other improper or unethical conduct relating to the practice of medicine constitutes unsatisfactory professional conduct.”

## Professional Misconduct

Section 37 of the Act sets out the meaning of professional misconduct as being:

*“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.”*

The obligations of medical practitioners is encapsulated by Priestly J A in **Richter v Walton**, an unreported decision of the 15<sup>th</sup> July, 1993.

*“The degree of trust which patients necessarily give to their doctors may vary according to the condition which takes the patient to the doctor. Even in regard to the most commonplace medical matters, the trust a patient places in a doctor is considerable. In some cases, of which the present seems to be an example, the patient’s trust cannot help but be almost absolute. The doctor’s power in regard to the patient in such cases is also*

*very great. I do not mean power in the abstract way but as a matter of fact; the extent of the power will vary according to the temperament of the patient, but the doctor for some patients and for limited period, because of the relationship in which they are temporarily placed, is in a position to do whatever the doctor wants with the body of the patient. This is one of the reasons why doctors are subject to correspondingly great obligations and are expected to maintain high standards; all this being very much in the public interest.”*

### Onus and Standard of Proof

The standard of proof to be applied by the Tribunal is that referred to in **Rejfev v McElroy** (1065) 112 CLR 517 @ 521. That standard was applied in **Bannister v Walton** (1993) 30 NSWLR 699 where it was held that the requirement is that the Tribunal be “*comfortably satisfied on the balance of probabilities*”.

The Tribunal must have regard to the gravity and importance of the matters which it is deciding in accordance with the principles stated in **Briginshaw v Briginshaw** (1938) 60 CLR 336 @ 360-363. At pages 361 and 362 Sir Owen Dixon stated:

*“Except upon criminal issues to be proved by the Prosecution it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the Tribunal. But reasonable satisfaction is not a state of mind that is obtained or established independently of the nature or consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question, whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters “reasonable satisfaction” should not be proved by inexact proofs, indefinite testimony, or indirect inferences.”*

### Evidence Before the Tribunal

The Tribunal had before it the various statements, reports, correspondence as contained in a number of folders which were admitted by consent, the opinions of a Peer Reviewer as to the practitioner's conduct, the reports and oral evidence of Dr Samuels.

The practitioner tendered a lengthy statement and a number of references or testimonials. He gave evidence before the Tribunal over the course of three days.

The documentary and oral evidence before the Tribunal disclosed the following matters.

The practitioner graduated from the University of New South Wales in 1975 and became a member of the Royal Australian College of Obstetricians and Gynaecologists in 1981. He was a well qualified practitioner and at one stage lectured at the School of Medicine at the University of New South Wales.

On the 11<sup>th</sup> June, 1997 a Professional Standards Committee (PSC) of the Medical Board determined:

- (a) That the practitioner had been guilty of unsatisfactory professional conduct; and
- (b) Suffered from an impairment within the meaning of the Medical Practice Act in that he suffers from personality and relations problems and depression that detrimentally affects his mental capacity to practice medicine.

He was reprimanded and directed to immediately cease the clinical practice of obstetrics. Conditions were imposed on his practice including inter alia the requirements that he continue in psychiatric treatment.

The PSC had conducted an enquiry into his management of 9 obstetric patients. His treatment of one patient led to her death. In another case the death of a baby occurred. The life of another patient was endangered.

It is unnecessary to refer to the reasons for the decision of the PSC, save and except to observe that it was made clear that the practitioner's conduct demonstrated many serious deficiencies and failings in his practice as an obstetrician.

The practitioner has admitted the findings and orders of the PSC and has agreed with the necessity and propriety of them. Indeed, in his statement tendered to the Tribunal, he stated that he was appalled by and ashamed of his conduct. He expressed his deep remorse for his unsatisfactory treatment of his patients.

He went on to make admissions wherein he agreed that the services he performed as described in Particulars 2, 3 and 4 of the Complaint were in breach of the PSC order of the 21<sup>st</sup> July, 1997 and acknowledged that such conduct constituted unsatisfactory professional conduct.

The Medical Board convened an enquiry under Section 66 of the Act to determine whether the practitioner had breached the PSC orders. On 21<sup>st</sup> February, 2003 that Section 66 enquiry found that the practitioner had breached the order of the PSC that he cease the clinical practice of

obstetrics and imposed yet further conditions on his practice. He was reprimanded for his unsatisfactory professional conduct.

The practitioner appealed against the conditions imposed by the Section 66 enquiry. Further, he applied for a review of the conditions on his registration. That application is one of the two matters before this Tribunal.

Before the commencement of the hearing before this Tribunal the practitioner advised that he wished to withdraw his appeal against the conditions imposed on his registration by the Section 66 inquiry.

This Tribunal was informed that it had been agreed by consent the Tribunal should order:

- (1) That leave is granted to Dr Reeves to withdraw his appeal;
- (2) That Dr Reeves pay the Medical Board's costs of the appeal.

The Tribunal makes those orders.

Subsequent to the PSC inquiry, correspondence passed between the practitioner and Mr Dix, Registrar of the Medical Board, in which it was made perfectly plain that he was not to practise obstetrics either as the principal clinician nor as an assistant, including assisting at caesarean sections.

The practitioner worked at Hornsby Hospital for several years. Complaints had been raised by the staff as to his conduct.

In the course of his evidence before the Tribunal, the practitioner refuted the suggestions that he had been at fault in his relationship with the staff at Hornsby Hospital . He strenuously denied the suggestions that his conduct was such as to cause unsatisfactory relationships with the staff which in turn impacted upon the management of the patients. He gave exculpatory explanations as to his conduct and behaviour.

Nevertheless on 9<sup>th</sup> February, 2001 the hospital informed him that his temporary conditional appointment with limited privileges at the hospital had expired, that he had no current appointment or privileges and that there had been clear breaches of the conditions of his temporary appointment with limited privileges.

Following the cessation of his engagement at Hornsby Hospital the practitioner worked as a general practitioner in a medical centre.

He was for a time a visiting VMO at the Seventh Day Adventist Hospital however this engagement ceased in 1999.

On the 17<sup>th</sup> September, 2001 the Southern Area Health Service (SAHS) advertised for a specialist obstetrician and gynaecologist at the Bega and Pambula Hospitals.

In the advertisement seeking expressions of interest, it was made perfectly clear that the successful applicant would be required to undertake the role of consultant obstetrician to the resident G.P. Obstetricians and to direct and participate in periodic and regular clinical reviews of the obstetric and gynaecological services of each hospital ....

It stated: “Expressions of interest are sought from specialist obstetricians and gynaecologists interested in providing on site specialist obstetric services in supports of G.P. Obstetricians ....”

The practitioner attended upon Dr Mortimer, Deputy Director, Medical Services at SAHS and in response to Dr Mortimer’s query as to why he was interested in the position, the practitioner explained that he was working in Sydney and looking for a lifestyle change.

He told Dr Mortimer that the New South Wales Medical Board had placed conditions on his medical registration relating to his medical condition.

The practitioner stated that he would not run a private obstetric practice or manage obstetric patients in his own name, but he could provide specialist back up to local general practitioner obstetricians.

Dr Mortimer subsequently wrote to him advising that there was a need for support to general practitioner obstetricians in the management of obstetric emergencies.

The practitioner submitted an application and supporting documentation including a letter from the New South Wales Medical Board of the 27<sup>th</sup> December, 2001 as representing the conditions attaching to the practitioner’s medical registration. That letter referred only to his registration being subject to health related conditions and monitoring related conditions. There was no reference to the current conditions fixed by the PSC directing that he cease the clinical practice of obstetrics.

In his resume supporting his application, the practitioner falsely represented himself as holding current VMO appointments at Hornsby and Kuringai District Hospital and Sydney Adventist Hospital.

There can be no doubt that the practitioner was fully aware that the position for which he applied and for which he was accepted involved obstetric practice.

He was prepared to take whatever steps he deemed expedient to place himself in a position whereby he could resume practice as an obstetrician.

Those steps included bare faced lies and calculated omissions to provide information which he knew would effect his application.

He deliberately deceived the SAHS by (a) failing to disclose the restrictions on his right to practice as imposed by the PSC; (b) by actively representing that the only restrictions to which he was subject were health related.

He stated “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 physician’s program undergoing regular reviews by the Board since that time”.

Clearly, he was seeking a position which involved the performance of obstetric services in the full realisation that if he obtained that position he would be practising in contravention of the PSC order.

The practitioner engaged in yet further deliberate deceptive conduct when he wrote to the Board on the 14<sup>th</sup> April, 2002 and confirmed oral information supplied by phone to the effect that he had been successful in seeking a VMO position as a specialist gynaecologist in the SAHS, in particular at Bega and Pambula Hospitals.

He stated: “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 ... In this area obstetric services are the realm of accredited G.P. 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”.

He entered into a fee for services contract with the SAHS wherein he agreed to provide medical services to public patients, i.e. obstetric and gynaecological services which included the provision of on-call obstetric service and performing emergency caesarean sections.

His initial obstetric treatment involved a caesarean section at Bega Hospital on 3<sup>rd</sup> June, 2002. Thereafter he provided a variety of obstetric services at Pambula and Bega Hospitals as detailed in the Particulars to the Complaint.

By November, 2002 the Medical Board had become aware that the practitioner was providing clinical obstetric services in the course of his employment with SAHS.

On the 13<sup>th</sup> November, 2002 the Medical Board wrote to him setting out the relevant order of the PSC of 21/7/97 and pointed out that it appeared that he was practising in breach of the orders of the PSC. He was informed of the Board's requirements that it be advised as to his current employment.

On the 13<sup>th</sup> November, 2002 the practitioner wrote to the Board:

*“Dear Dr Reid,*

*Dr Arthurson spoke to me tonight and mentioned your concern about my practice in the Southern Area Health Service.*

*I will be scrubbed from 0730 to 1400 hours Thursday and will contact you by telephone when I am available.*

*I will briefly outline the situation as it stands.*

*On my last review with Professor Glover and Dr Amos, we discussed my long term plans, and I indicated to both that I was planning to set up a Gynae practice in a country region and had no intention of practicing obstetrics I travelled to Northern New South Wales and had interviews at Tamworth and Armidale but both these areas required obstetric as well as Gynae practice and I chose not to apply for those positions. At the end of last year, I came to the South Coast and met Dr John Mortimer (Deputy Director of Medical Services SAHS) and discussed with him the requirements at Bega. He stated clearly that the biggest problem was not obstetric provision but specialist gynaecological services. I then travelled to Goulburn in January 2002 and had an interview with Dr Robert Arthurson (Director of Medical Services SAHS). I explained at this interview that I had a conditional registration and I would not practice obstetrics. Dr Arthurson indicated that my application would be considered on those grounds. I formally applied for the position of VMO (Gynaecology) to the Southern Area Health Service and went through a tele-conference interview where I again indicated that I had conditional registration and I would not be practicing obstetrics.*

*In April I was offered the position and commenced work in May 2002. My practice is specialist gynaecological services. I introduced myself to all the practicing GP's and explained that I would not be doing obstetrics to them. 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.*

*The obstetric services in this region are based at Bega and at Pambula Hospitals.*

*There are four GP obstetricians at Bega, Dr J. Marshman, Dr P. Salisbury, Dr. F Simonson and Dr L Waters. Of these, Dr Simonson and Dr Waters have been trained and are accredited to perform Caesarean Sections. In addition, two general surgeons will perform Caesarean sections on their elective lists.*

*At Pambula there are also four GP obstetricians, Dr R Morton, Dr M Pentin, Dr F. Simonson and Dr J Watterson. Of these, Dr Simonson is accredited for Caesarean Section.*

*The policy of these units is at Caesarean Section, four practitioners are required, Surgeon, Assistant, Anaesthetist and Practitioner for the baby. The General Practitioners also provide the anaesthetic services at both these hospitals and I have commonly acted as Assistant at Caesarean Sections, both elective and emergency to complete the requirements of safe staffing in the unit. I have not performed any elective obstetric services in line with my conditional registration.*

*During October 2002, Dr F. Simonson suffered acute pancreatitis and was air-lifted to Canberra for specialist treatment. He is still unfit for his duties and I have replaced him on the Caesarean Section Call Roster as there is no other practitioner able to do so. I am uncertain as to when Dr Simonson will be fit to return to his duties and his obstetric roster is being covered by the other GP obstetricians but at present, as Dr Waters is on annual leave, I by necessity am covering emergency Caesarean Sections only.*

*On my last review with Dr Amos and Professor Glover I specifically asked advice about such a situation where I would be requested to help in an emergency, Dr Amos explained to me that under the Medical Practitioners Act, I would be obliged to treat the patient in the absence of*

*any other practitioner. This has happened less than four times in the last six months.*

*My week is fully occupied with gynae consulting and a full day operating at Pambula Hospital.*

*I have been asked to consult in complicated antenatal problems and have given appropriate advice, resulting in the transfer of patients to more appropriate settings. At present, I am the only gynaecologist in the far Southern Region and as such, am staying within my conditional registration. As I am unable to anticipate emergencies, I clearly may find myself called to provide care, again and until Dr F Simonson and Dr L. Waters are both back on duty, I will be obliged to provide such help as is needed.*

*If my understanding of these circumstances is not correct, I would like some guidance as it would require the closure of the Obstetric Units at Pambula and Bega until full staffing is achieved.*

*I have no intention of practicing obstetrics again, but after lengthy discussion with Dr Amos and Professor Glover, am fully aware of my responsibilities as a Medical Practitioner in emergency situations.*

*I will speak to you once I have finished my List on Thursday 14<sup>th</sup> November 2002 and would welcome an opportunity for review by the Medical Board, this of course would have to occur after Dr F Simonson is fit to resume his practice.””*

That letter comprised a litany of lies and deceptive statements. It was a virtual catalogue of falsities, e.g.

- 1) He noted he had performed no elective obstetric services and maintained a specialist gynaecology practice;
- 2) He had refused any obstetric referral;
- 3) He had informed the SAHS that he had conditional registration and would not practise obstetrics;

- 4) He stated, “My practice is specialist gynaecological services. I introduced myself to all practising GPs and explained that I would not be doing obstetrics for them”.
- 5) “During the last six months I have been called in on a couple of occasions to provide emergency help – caesarean section for foetal distress”.
- 6) “On my last review with Dr Amos and Professor Glover I specifically asked advice about such a situation where I would be requested to help in an emergency. Dr Amos explained to me that under the Medical Practitioner’s Act I would be obliged to treat the patient in the absence of any other practitioner”.
- 7) “At present I am the only gynaecologist in the far Southern Region and as such am staying within my conditional registration”.
- 8) “I have no intention of practising obstetrics again”.

The Tribunal holds no doubt that Dr Glover and Dr Amos had informed the practitioner that he could act in an obstetrics emergency. For example, in dealing with a woman on a plane or on a street where there is no other alternative. It finds that the practitioner held no understanding that emergency obstetric services as described by Dr Amos and Dr Glover, referred to a situation where he had positioned himself to render such services.

On the very day that the practitioner wrote that letter, he performed an operation in breach of the PSC order. He did so in the face of a further letter from the Medical Board of the 14<sup>th</sup> November, 2002 advising that he was currently practising in breach of the PSC order of the 21<sup>st</sup> July,

1997 and stating “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”.

The practitioner wrote to the Medical Board on the 15<sup>th</sup> November 2002 in which he stated “I have since 1997 not practised obstetrics and have been concentrating entirely on gynaecological services ....”

He requested formal changes in the conditions of his registration.

In the course of that letter he made further false claims to the effect that he had informed the Selection Committee at SAHS that he would not be able to perform any obstetric services and that he was advised that it was not obstetric services that were a problem in the Far South Coast, but the provision of gynaecological services.

In the face of those letters from the Medical Board he flagrantly defied it and continued to breach the PSC orders by providing further obstetric services at Bega Hospital on the 9<sup>th</sup> December, 2002; 20<sup>th</sup> December, 2002; 3<sup>rd</sup> January, 2003 and the 9<sup>th</sup> January, 2003.

The practitioner’s appointment as a VMO Bega and Pambula Hospitals was terminated by the SAHS in mid 2003.

## Practitioner's Case

It was the thrust of the practitioner's case that he felt the need to involve himself in the management of obstetric patients at Bega and Pambula as if he did not become so involved this would have caused them harm, in particular the "Caesar" patients at the Bega and Pambula Hospitals.

He stated in effect that there was no one within 200 kms in any direction to render obstetric services. The nearest obstetrician specialists were at Moruya, Canberra or Sale in Victoria.

He was concerned that on occasions there was no cover to do caesarean sections at the Bega Hospital in which case the labour ward had to be closed and patients transported by road to either Moruya or Canberra.

His evidence was:

*"Through the discussion I'd had over the preceding six years I'd come to understand and it may be false, but this is truthful at that time, that in the circumstances of emergencies, or where there was no-one else able to provide a service, I was obliged, under the Medical Practitioners Act, to do so if I was required or requested.*

*I felt I was acting in that situation, not just in emergencies, but in circumstances where there were no other practitioners able to provide the service. That is the effectiveness of all these obstetric cases. I was in a circumstance that I didn't choose to place myself in, but I found myself in, where there were no other people able to provide services for illness, for absence, for leave, for inability to provide the service, and it left me in a situation where I believed I was bound, as I understood, by the Medical Practitioners Act, to render that service when I was requested by midwives or other general practitioners".*

When questioned about non emergency treatment, he responded:

*“Members of the tribunal, I acted in non-emergency situations which I perceived to be urgent. There is a difference”.*

In the course of his cross-examination he acknowledged that the PSC hearing was necessary and that compliance with the requirements of the Medical Board was not an intervention but something of benefit to him. He agreed with the proposition that he had been repeatedly told by the Board that he must not practice obstetrics.

He refuted the suggestion to him that he had decided to ignore the terms of his registration, and stated that he did not decide to ignore the Board’s orders. It was his position that he found himself in a situation where he believed that there was a quandary in that to his understanding as a medical practitioner, he had to provide services when required, if there was no one else to do so.

Returning to the practitioner’s statement in which he said “I did not intend to breach any condition of my registration in taking the position at SAHS nor did I intend that my conditional registration would inconvenience any patient ... While admitting I have knowingly breached the order I believed at the time I was acting in the best interests of the patient and my medical colleagues given the circumstances and available medical resources in the Bega Valley. I did not breach the order to spite the Medical Board”.

“I breached the order in circumstances where I felt physically and mentally well and in respect of services/procedures in which I was technically competent and experienced. I do not believe I endangered the

life, health or wellbeing of any patient or that the outcome for the patient was in any case not at least as good as it would have been in the hands of a competent and experienced obstetrician”.

“But in most of the circumstances I breached the order I believe I was more able than the practitioner who otherwise would have had to perform the service (if there was one) and the patient was safer if I was to perform the service than if I was not to”.

His stance was reflected in this passage of evidence:

*Q. You breached that undertaking, didn't you?*

*A. Yes, I did.*

*Q. Why should this tribunal place any reliance on your word?*

*A. My actions were in breach of the guidelines I had. I endeavoured to indicate that I was trying to comply as best I could. Unfortunately, I found myself in circumstances that I could not do anything about and I had to make decisions, not in my interests but in the interests of patients, and it is clear to me that that has been at my expense, not at the patients. No patient has been harmed by me providing information and expertise that didn't exist in the valley and that's the quandary I find myself in.*

*Q. If the tribunal were to permit you to continue in practice, presumably you would do what you thought was right, irrespective of whatever restrictions were placed on your practice, having regard to the way in which you have conducted yourself in the past, would you not agree?*

*A. No, I disagree. I have learnt a very valuable lesson about the restrictions and their significance. Unfortunately, I have been told by officers of the board that they don't care about the area, the problems with health down there, and it wasn't my responsibility to*

*care about them either. I am in total disagreement with that attitude.*

*I am sorry, but I sincerely believe that I should be concerned about the people of the Bega Valley and the level of their health care. That primarily was my motivation. I arrived there doing gynaecology. I found that the obstetric services were poor and the outcomes were atrocious and that complications were occurring unnecessarily. I felt obliged to act in the patients' interest and unfortunately, at my expense. I have lost my position. I have suffered further stress and, clearly, I am in disagreement with the Medical Board and tribunal.*

*I don't know what else I can do. I have at all times behaved in what I see to be the best interests of the patients and their families. I don't know how I can not do so. I envisage, if I am to continue practising, to continue as a gynaecologist and simply refuse attendance at obstetric patients. I don't know what the consequence of that will be but I suspect it will be detrimental to the pregnant patients of the valley.*

When the practitioner was questioned as to what he had told his prospective employer, the SAHS, he agreed that he didn't disclose a finding of unsatisfactory professional conduct having been made against him, however, he went on to say that he thought that being an impaired practitioner covered all of that.

He persistently maintained that he had informed the SAHS that he was impaired and would not perform obstetrics.

In his evidence he stated: "but I also did not understand the difference between I will not do obstetrics and I cannot do obstetrics".

*Q. You well knew the difference between an order that you not carry out obstetrics and a willingness to do obstetrics, didn't you?*

*A. But I wasn't willing to do obstetrics. I do not understand the point you are making. I accept that an order is different from the fact that I would not do obstetrics. Could not and would not are different and that's what I have come to understand is critical in this discussions, but I didn't do it out of shame or any other fear."*

When questioned about the contract he signed with the SAHS he maintained that he hadn't seen the whole contract. That contract contained a provision "To provide on-call obstetric services and perform emergency caesarean sections if indicated in accordance with the roster published by the Hospitals".

It was put to him:

*Q. You signed a contract that you were never legally permitted to fulfil, didn't you?*

*A. I didn't believe that at the time and I still don't.*

There is no charge levelled at the practitioner that in rendering obstetrical services in breach of the PSC order that he demonstrated any lack of skill or lack of care in the practice of medicine. There was no suggestion that any of his patients were disadvantaged by his attentions and there was certainly no evidence of any adverse outcomes related to lack of skill or lack of competence.

A number of practitioners wrote highly impressive letters laudatory of the practitioner's skills and these have been carefully considered by this Tribunal. The Tribunal does not propose to quote all of their opinions. Suffice it to say they were supportive of him.

For example, Dr Simonson assisted him with most of his operations and was impressed by the practitioner's competence and his ability to cope with major unexpected operative complications. He stated: "I have had experience with a number of gynaecological surgeons over time and I regard Dr Reeves as one of the better surgeons".

Dr Janet Waterson considered his operating times and general skills within the theatre as satisfactory however she stated "Like most surgeons I have known dealing with complications does not appear to be Dr Reeves' forte".

Dr Patricia Salisbury regarded him as an asset to the Bega Valley – she was happy with the treatment afforded to patients she referred to him.

Clearly he was well regarded by practitioners in the Bega Valley who appreciated the assistance he had given them and their patients. It is to his credit that he earned their respect.

### Practitioner's Conduct

Defiance and deception were the two major features of the practitioner's conduct in relation to:

- (a) The constraints cast upon him by the order of the PSC;  
and
- (b) His dealings with the SAHS and the Medical Board during 2002/03.

There can be no doubt that the SAHS was seeking a practitioner to provide gynaecological and obstetric services. It is beyond doubt that the practitioner represented himself as being qualified, willing and able to provide such services. He did so being fully aware that he was prohibited from practising obstetrics by virtue of the PSC orders. Yet he patently defied those restrictions by seeking a position which involved him performing the very services, which for very good reason, had attracted the PSC's order.

The evidence clearly discloses that the practitioner engaged upon a calculated course of deception in his dealings with SAHS. In purporting to frankly disclose that there were restrictions upon his practice, he represented that he was subject to a medical or health impairment. He concealed from the SAHS the PSC order and at no stage revealed his misconduct which gave rise to the necessity for that order. No mention was made of his serious mismanagement of a number of patients and the death of one of them, nor of the findings of unsatisfactory professional conduct.

The information he provided to the SAHS included the statement "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".

He provided a copy of a letter from the Board setting out the conditions with regard to impairment but made no reference to the restrictions on his right to practise.

In his resume supporting his application, the practitioner falsely represented himself as holding current VMO appointments at Hornsby and Kuringai Hospital and Sydney Adventist Hospital.

The Tribunal believes that the practitioner well knew that he would be required to perform obstetric services and that he entered into a contract to do so.

It questions the accuracy of the practitioner's evidence which was to the effect that he didn't read or appreciate the provisions of that document.

It is patent that he was prepared to take whatever steps he deemed expedient to place himself in a position whereby he could resume practice as an obstetrician. These steps included barefaced lies and calculated deceptions to provide false or misleading information, which he knew would affect his application.

The practitioner engaged in yet further deliberate deceptive conduct when he wrote to the Medical Board on the 14<sup>th</sup> April, 2002 and confirmed oral information, he had provided by phone, to the effect that he had been successful in obtaining a VMO position as a specialist gynaecologist in the SAHS, in particular at Bega and Pambula Hospitals.

He stated, “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 ... In this area obstetric services are the realm of accredited GP obstetricians (seven) most of whom I have met and explained that I would not be doing obstetrics, further my indemnity is for gynaecology only – a point I also emphasised in my application and interview.

When his conduct became known to the Medical Board he combined defiance and deception when he wrote to Dr Dix on 13<sup>th</sup> November, 2002, the contents of which are fully set out herein.

- (a) Stating that he wouldn't practice obstetrics; and
- (b) Engaged in an obstetrical procedure on that very day.

It was as if he was flaunting his lies and his calculated disobedience to his obligations.

Clearly he had attracted some obstetric patients who were referred to him by practitioners because he was holding himself out to be an obstetrician, albeit it is his evidence that he refused to treat patients who arrived at his surgery seeking obstetric services.

The Tribunal has no doubt that had he been frank with the SAHS, honest with his fellow practitioners and had made his patients aware of the true position, then he wouldn't have had the opportunity to practise obstetrics.

His motives weren't completely altruistic as it is to be noted that he charged normal fees for his obstetric services although he denied that his breaches of the PSC orders reflected a desire to make money or to improve his status.

Having observed the practitioner give evidence over the course of some three days, the Tribunal formed an unfavourable impression of him in that it considered his evasive and obfuscatory answers did not demonstrate that he was being forthright and frank.

The conclusion was inescapable that his rambling and often non-responsive answers were deliberately employed to avoid addressing the questions posed.

Having so persistently lied in his dealings with the SAHS and the Medical Board, it was incumbent upon him to demonstrate to this Tribunal that he was prepared to give forthright and frank answers in the course of his sworn evidence. He did not do so and failed to create any impression that even at this stage he was prepared to embrace the truth.

Having regard to his untrustworthy conduct, so consistently and persistently demonstrated, the Tribunal believes that he would deceive and defy if given the further opportunity. That he would proffer lies, half truths and misrepresentations to further his aim. Dr Bland, as a peer reviewer, having considered the practitioner's conduct with regard to the SAHS and his provision of obstetric services, expressed his severe disapproval of the practitioner's actions.

Medical practitioners enjoy a position of eminence. Their status in the community is in large measure based upon their privileged position of trust. Patients place in them confidences and highly private personal secrets. Accordingly, they must be seen as men and women of probity and integrity. In short, they must be regarded as honest and honourable.

It does not suffice that a medical practitioner possess diagnostic skills or advanced surgical techniques. A practitioner must earn the confidence of the patient as it is only if the practitioner is regarded as frank, truthful and trustworthy that the patient will accept medical advice as being sound. If the practitioner demonstrates that deceptive conduct comes easily, then it is impossible for the patient and the community to afford the practitioner the respect which must form the basis of a practitioner/patient relationship.

A patient who knows his doctor to be a liar, sly and deceptive, is hardly likely to give a full and frank history and is less likely to accept the doctor's advice with regard to the patient's treatment and that of his or her children.

Clearly, it would be devastating to a female patient to learn that her doctor was executing surgical procedures upon her which he was prohibited from performing by reason of misconduct in carrying out similar procedures, which had caused serious harm to former patients.

There is no evidence before the Tribunal as to whether the practitioner's actions have damaged the reputation of the medical profession, however, It is unarguable that his conduct had the potential to bring the medical profession into disrepute.

He displayed an arrogant contempt for the authority of the PSC and the Medical Board. This conduct made more readily acceptable the opinion expressed by Dr Samuels to the effect that the practitioner's conduct could be explained by narcissistic personality disorder.

It is an idle claim that the practitioner is not a danger to the public. Any doctor who is not prepared to obey and comply with restrictions placed on his practice, for sound and obvious reasons, must be regarded as a serious potential risk, if not an actual risk, if he seeks to treat without entitlement so to do.

Seemingly he regards himself as the sole judge of his skill and competence and was not prepared to accept the findings of the PSC and the restrictions it imposed based on the clear evidence of his poor judgment and defective practices.

When the PSC placed conditions upon the practitioner, it did not do so capriciously but for unquestionably good and sound reasons.

His multiple breaches of the PSC orders demonstrate a total lack of insight into the reasons for them.

It appears to the Tribunal that there is a substantial defect in the practitioner's character which manifests itself in his failure to understand his obligations with regard to the practise of medicine and the requirements that he be honest and fair in his dealings with his employer and those charged with the administration of the medical profession.

The PSC and the Medical Board were entities acting to maintain appropriate professional and ethical standards designed to protect the public and also the medical profession.

The Tribunal is comfortably satisfied on the balance of probabilities,

- (a) That the practitioner's persistent breaches of his registration constitutes improper and unethical conduct relating to the practice of medicine;
- (b) The practitioner's lies and his deliberate course of deception on both the SAHS and the Medical Board also constitutes improper and unethical conduct relating to the practice of medicine.

So serious is such improper and unethical conduct that it amounts to professional misconduct.

The element of deterrence looms large in a matter such as this. The community has a rightful expectation that the Medical Tribunal will act responsibly and make orders which will not only deter the practitioner but other practitioners who might be tempted to disregard the obligations and restrictions cast upon them.

Confidence must be maintained in the high standard of competence and probity expected of the medical profession.

Issuing a reprimand or imposing a fine were not considered to be real options.

It was argued that some order short of deregistration was appropriate. Clearly, it would be an idle gesture to subject the practitioner to further conditions as he has so persistently demonstrated that he will cast aside any conditions when he finds them an impediment to his intentions.

It was submitted that an order for suspension is appropriate.

The Tribunal has no hesitation in rejecting this submission. It is inherent in such a measure that at the conclusion of the suspension the practitioner would have overcome the defects which led to its imposition and he would automatically be entitled to resume practice whether or not he was fit to do so. This Tribunal has no confidence that such would be the position with regard to the practitioner.

#### The Tribunal's Responsibility

The Tribunal considers that the practitioner's conduct constitutes gross professional misconduct of the most serious kind. It has the responsibility to protect the public interest, its health and safety when considering what action should be taken in the face of such gross professional misconduct.

The practitioner has persistently demonstrated a lack of integrity of such magnitude that he could not be regarded as possessing the moral and ethical standards required in a medical practitioner.

He has shown himself to possess a major defect in his character which is manifest by his dishonest and deceptive conduct and his flouting of his obligations. He is considered to be a person unfit to remain on the register of medical practitioners.

The Tribunal has determined that a period of three years elapse before the practitioner may make an application for a review of the Tribunal's deregistration order.

### Orders

- 1) The name of Graeme Stephen Reeves be removed from the register of practitioners of New South Wales;
- 2) Pursuant to Section 63(5) of the Act, the Tribunal orders that an application for review of Order (1) may not be made until the expiration of a period of three years from today;
- 3) That the practitioner pay the costs of the Health Care Complaints Commission of and incidental to this hearing.

(Sgd) Judge J C McGuire

(Sgd) Dr Kenneth Atkinson

(Sgd) Dr Marina Vamos

(Sgd) Dr Maureen Gleeson, PhD