PROFESSIONAL STANDARDS COMMITTEE INQUIRY

Constituted under Part 8 of *the Health Practitioner Regulation National Law (NSW)*

Inquiry into a complaint in relation to:

Dr Baderudin Khamis
MED0000939887

Date of Inquiry:	15 August 2017
Committee members:	Mr Mark Paul, Chairperson Dr Margaret Higgins Dr Marcela Cox Dr Catherine Berglund
Appearance for Health Care Complaints Commission:	Ms Angela Petrie of Counsel, instructed by Ms Emma Bayley, HCCC Legal Officer
Appearance for Dr Baderudin Khamis:	Mr Cameron Jackson of Counsel, instructed by Ms Barbara Versace from Avant Law
Date of decision:	15 September 2017
Decision	The Committee found unsatisfactory professional conduct proven and directed conditions be imposed when the practitioner is registered.
Non publication direction:	Refer to paragraph 8 of this statement of decision for details of non-publication directions.
Publication of decision:	The Health Care Complaints Commission, Dr Khamis, the Medical Council of NSW, and the National Board. Decision published in full.

STATEMENT OF DECISION

Introduction

1. Our inquiry concerns the practice of Dr Khamis in the care of four of his patients.

2. After obtaining his medical degree from the Royal College of Physicians and Surgeons in Ireland in 1975 Dr Baderudin Khamis undertook his internship at St Laurence's Hospital in Dublin. For the next three years he worked in the Department of Medicine at the Royal College of Surgeons in Dublin. He migrated to Australia in 1979 and became registered to practise medicine in New South Wales.

3. Dr Khamis commenced in a general practice in Wauchope and began his long career looking after the local community. He secured an appointment as Visiting Medical Officer at Wauchope Hospital in 1980 working in casualty and attending many of his patients. In November 2014 he received an award from the Rural Doctors Association, acknowledging over 35 years of service to the rural community. Dr Khamis has a long and distinguished career serving the people of Wauchope, and his many contributions should not be forgotten.

4. On 21 July 2017 Dr Khamis advised AHPRA that he had retired from medical practice. On 28 July 2017 his name was removed from the register of medical practitioners, effective from 27 July 2017. Dr Khamis has told us he has no intention of ever reapplying for registration.

5. On 12 October 2016 the Health Care Complaints Commission had made a **Complaint** in accordance with s39(2) and s90B(3) of the *Health Care Complaints Act* and s145A of the *Health Practitioner Regulation National Law (NSW)* (the **National Law**) alleging that Dr Khamis had been guilty of unsatisfactory professional conduct in the treatment he afforded to four patients, and the records he kept, in different periods from 2013 through to early 2015. The Complaint contained four distinct complaints, which may be dealt with together in the one inquiry (clause 6(1) of Schedule 5D of the National Law).

6. In large part Dr Khamis acknowledges the Complaint and accepts he has been guilty of unsatisfactory professional conduct under ss139B(1)(a) and (b) of the National Law. Although Dr Khamis is presently not registered, we have decided to make directions as to conditions that are to be imposed were Dr Khamis to become registered.

7. Before referring to the evidence, setting out our findings and giving reasons for our decision we deal with particular matters that arose during the course of the proceedings.

Non-disclosure order

8. On 5 April 2017 the Chairperson directed that nothing that would identify the four patients was to be published, and we refer to those patients as Patient A, Patient B, Patient C, and Patient D respectively. A similar order was made with respect to a

former patient of Dr Khamis who had made a complaint on 17 January 2012 about Dr Khamis (Exhibit A, Tab 1(d)). Those directions continue.

Application to terminate the inquiry

9. On 28 July 2017 Dr Khamis requested that the inquiry be terminated on the grounds that his name had been removed from the register on 27 July 2017. He had no intention of again practising, given his age and health, and it was not in the public interest for the inquiry to continue. The application was made under clause 12(1) of Schedule 5D of the National Law.

10. On 31 July 2017 the Commission wrote to the Medical Council of NSW opposing the application, and providing further information concerning Dr Khamis, some of which was not immediately relevant to the Complaint.

11. The issues were considered during a telephone directions hearing with the Chairperson at 2:30pm on 31 July 2017. By clause 12(3) an application to terminate an inquiry may be dealt with by Chairperson, and the decision is taken to be an exercise of the power by the Committee.

12. Both Dr Khamis and the Commission accepted that the application by Dr Khamis could be considered on the basis of the correspondence and the submissions made. However, to the extent that the correspondence from the Commission referred to matters that were not the subject of the Complaint before the Committee those matters were to be ignored, and they were not taken into account.

13. Ms Versace for Dr Khamis provided further information in relation to his personal circumstances and confirmed that Dr Khamis had no intention of seeking reregistration. By clause 12(1)(a)(ii) and clause 12(1)(b) an inquiry may be terminated if the practitioner ceases to be registered and it is not in the public interest for the inquiry to continue.

14. Ms Bayley, for the Commission, submitted that even though Dr Khamis was no longer a registered health practitioner and was unlikely to ever be registered, there was no evidence to support a conclusion that it was '*not in the public interest for the inquiry … to continue'*. Ms Bayley drew the Chairperson's attention to the value of an inquiry providing general deterrence, see *Health Care Complaints Commission v Do* [2014] NSWCA 307 [35], and that an inquiry might continue particularly in circumstances where there were factual disputes about serious allegations, see *Health Care Complaints Commission v Duggan* [2015] NSWCATOD 142.

15. If a practitioner is no longer registered then s146B(2) of the National Law permits a Committee to direct that conditions be imposed if the health practitioner were registered. Under clause 12 of Schedule 5D(1)(b) an inquiry may only be terminated if it were not in the public interest for the inquiry to continue. The mere fact of Dr Khamis no longer being registered is not a basis to terminate an inquiry. The information concerning Dr Khamis's health was not of a kind that suggested it would not be in the public interest to proceed.

16. In preparation for the inquiry Dr Khamis had submitted a response to the Complaint in which he admitted many aspects of the subject matter of the Complaint, although there were still matters in dispute. If upon inquiry the Complaint were established, then the Committee could consider a direction to impose conditions were Dr Khamis to become registered. The National Law provides that the inquiry continue unless not in the public interest.

17. Even if Dr Khamis did not become registered there is still benefit in the public and the profession having access to a decision of the Professional Standards Committee that considers whether Dr Khamis's alleged conduct amounted to unsatisfactory professional conduct. A direction concerning conditions, if appropriate and imposed, could give guidance as to how issues of this kind might be managed.

18. The application to terminate the inquiry was refused.

19. Upon the application being refused Ms Versace said she was obtaining further instructions from Dr Khamis as to whether there would be any further admissions as to the subject matter of the Complaint. If there were to be further admissions then the evidence to be considered or tested by the Committee might be more limited. If Dr Khamis were to make any further admissions then he was directed to do so by noon on Friday, 4 August 2017.

20. Our inquiry took place on 15 August 2017.

Further admissions by Dr Khamis

21. At the commencement of the inquiry Mr Jackson for Dr Khamis provided us with a further amended reply to the Complaint (which became Exhibit D) and formally made admissions on behalf of Dr Khamis in response to the Complaint. There was little that was in contest about the subject matter of the Complaint or whether Dr Khamis's conduct amounted to unsatisfactory professional conduct.

22. Dr Khamis did not attend the inquiry. He was not prevented from attending by illness or other circumstance. We were told Dr Khamis felt too ashamed to attend, particularly as the Complaint came at the end of his long and distinguished career. There was no application for adjournment by Dr Khamis or the Commission. The inquiry proceeded in his absence. We have relied upon the material provided to us along with the helpful and focussed submissions of Ms Petrie for the Commission and Mr Jackson for Dr Khamis.

The documents provided to the Committee

23. We received two folders of material from the Commission (Exhibit 1) containing matters relating to the Complaint including records of proceedings under s150 of the National Law heard on 6 May 2015 with a written decision of 18 August 2015 imposing conditions on his practice. On 31 August 2015 Dr Khamis sought review of conditions under s150A of the National Law, and we were provided with the related material including the reasons for the subsequent decision dated 23 December 2015. These conditions required Dr Khamis to practise under supervision, and he gave consent for the Medical Council to obtain information from Medicare about Dr Khamis.

Included was a Neuropsychological report by Dr Stewart of 25 July 2015 (Exhibit 1, Tab 14) and a report from Dr Rosen, a neurologist, dated 10 September 2015 (Exhibit 1, Tab 18) – expressing different views as to cognitive impairment, if any.

24. The folders included details of a patient complaint made in 2012, and correspondence from the Medical Council of NSW warning Dr Khamis to be more careful with his medical records and to meet the requirements of the Regulation.

25. The folders included a report from Dr Geraldine Duncan as an expert's assessment of Dr Khamis's conduct. Dr Khamis did not contest Dr Duncan's views, except as set out below.

26. Ms Petrie provided a chronology (Exhibit 2) but with redaction of some information which was not immediately relevant.

27. Ms Petrie also sought to tender materials relating to recent proceedings (under s150 of the National Law) that had taken place shortly before Dr Khamis sought his removal from the register. Aspects of that material had been referred to in the redacted portion of the chronology.

28. In support of the tender of the material, Ms Petrie said the material would be relevant to the exercise of the powers under s146B of the National Law upon findings of unsatisfactory professional conduct. Mr Jackson submitted the material was prejudicial and could affect the Committee's consideration of whether there had been unsatisfactory professional conduct.

29. We did not receive the material at that stage but left it to the Commission to retender the material on the question of exercise of powers if the Committee found that the Complaint was proved.

30. On behalf of Dr Khamis we received a folder (Exhibit A) containing a statement of Dr Khamis dated 6 June 2017 with annexures, his initial formal written admissions and some references. We also received a statutory declaration of Dr Khamis (Exhibit B) saying he had no intention of ever reapplying for registration, and a supplementary statement of Dr Khamis dated 4 August 2017 (Exhibit C) dealing with circumstances of his recent removal from the register. Importantly we were given the further amended formal reply to particulars of the Complaint (Exhibit D).

The Complaint

31. The Complaint is set out at Annexure 2 to our decision but without the schedule containing the names of Patient A, Patient B, Patient C and Patient D. The Complaint consists of four complaints in respect of the four patients, with background circumstances for each. The allegation is of unsatisfactory professional conduct under s139B(1)(a) of the National Law in the treatment afforded to each patient and a related allegation of unsatisfactory professional conduct under s139B(1)(b), being a contravention of Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation* 2010 in respect of his record keeping.

32. By Exhibit D, Dr Khamis admitted the subject matter of the Complaint and that he was guilty of unsatisfactory professional conduct in respect of the four complaints. Nevertheless, in his reply he did not admit, or had had points to make about the following alleged particulars:

    (a) Complaint One A, paragraph 2(c) concerning Patient A's doses of Prednisone;

    (b) Complaint Three A, paragraph 1(b) in that he said he did discuss the listed factors but had not made a record in the notes;

    (c) Complaint Three A, paragraph 2(b) in that iron and haemoglobin studies had been ordered sufficiently regularly;

    (d) Complaint Four A, paragraph 1(a) in that he performed the heart rate and rhythm, blood pressure and chest auscultation examinations but failed to make a record in his notes.

33. Taking account of Dr Duncan's report, the other documents provided by the Commission, and the material from Dr Khamis, along with the subsequent discussions with the representatives for Dr Khamis and the Commission, we were able to conclude that both parts of each of the four complaints were proved, even allowing for the issued raised by Dr Khamis. As explained below we came to our own assessment of Dr Khamis's conduct, and did not simply adopt Dr Duncan's views, even though we generally agreed with her assessments.

34. Each complaint and the matters not admitted by Dr Khamis are examined below, along with other aspects of some of the particulars. Notwithstanding the admissions by Dr Khamis it is useful to consider the circumstances of each of the complaints in turn.

35. Although the parties had not requested that we proceed on a two-stage basis we adjourned to consider whether the Complaint was proved. In undertaking our task, and notwithstanding Dr Khamis's admissions, we were mindful of the obligation to think carefully in reaching our conclusion (*Briginshaw v Briginshaw* (1938) 60 CLR 336).

Complaint One A and One B

36. As set out in the annexure, Complaint One concerned Dr Khamis's failure to adequately examine or assess Patient A and his failure to develop an adequate medical plan for the patient's Polymyalgia Rheumatica. Dr Khamis admitted the particulars alleged except the question of whether Patient A's dose of Prednisone needed to be reduced, and if so, at what rate. Dr Khamis said that he relied on the discharge summary in that he would have been given a copy of the discharge summary when the patient presented (Exhibit A, statement of Dr Khamis, paragraph 49, and pages 46 to 49. And 52 of Annexure C), and in effect, could be taken to have deferred to the specialist's knowledge in not considering any other course of action with respect to Prednisone. Whilst Dr Khamis may well have been cognisant of those aspects of the discharge summary there is no evidence that he considered that information in the development of an adequate management plan.

37. Complaint One B was that Dr Khamis was guilty of unsatisfactory professional conduct under s139B(1)(b) of the National Law in that he had failed to meet the requirements of clause 7 of Schedule 2 of the *Health Practitioner Regulation (NSW) Regulation 2010* in relation to Patient A's clinical records. The alleged breaches took place on 13 January 2014, on 12 December 2014, and again on 16 December 2014 in Dr Khamis not recording information that was known to him that was relevant to Patient A's diagnosis or treatment plan, and more generally by not including information that would enable another practitioner to continue management of Patient A.

38. In her report Dr Duncan expressed the view that Dr Khamis's conduct in relation to Patient A as particularised fell significantly below the standard expected of a general practitioner of an equivalent level of training and experience at the time, and it invited her strong criticism. The Committee is of the same view even allowing that Dr Khamis may well have been relying on the discharge summary as an aspect of developing a management plan for Patient A.

39. In our view Dr Khamis's conduct fell significantly below the standard reasonably expected of a practitioner of his level of training and experience, and his record keeping was in contravention of the Regulation as alleged.

Complaint Two A and Two B

40. Dr Khamis admits the entirety of this complaint. On 6 March 2015 he was assessing Patient B, who had been seen by others in the practice in the past. He diagnosed bilateral renal artery stenosis, referred the patient to a vascular surgeon, and provided a prescription for Olmesartan. However, Dr Khamis failed to properly examine or assess the patient in that he did not measure the patient's weight or blood pressure, and did not investigate by urinalysis. Dr Khamis did not order follow up pathology of creatinine, electrolyte levels, or urea, nor any blood pressure recordings in the first month of treatment. While the prescription of Olmesartan is not necessarily contra-indicated it potentially has side effects and Dr Khamis should have followed up with regular electrolyte investigation and blood pressure recordings in the first month (Dr Duncan's report, p13). Dr Khamis's records were inadequate in that he did not record his findings, or results of examinations, his reasoning or a co-ordinated plan.

41. In our view Dr Khamis's conduct fell significantly below the standard reasonably expected of a practitioner of his level of training and experience, and his record keeping, such as it was in contravention of the Regulation as alleged.

Complaint Three A and Three B

42. Between 2012 and July 2013 Patient C attended the medical practice for regular venesections for his Porphyia Cutanea Tarda, which were performed by Dr Khamis or one of the practice nurses. The patient returned for regular venesections in December 2014 and was seen by Dr Khamis on a few occasions through to March 2015.

43. The complaint is that in 2013 and 2014 Dr Khamis failed to adequately manage Patient C's condition in that he did not arrange for gene analysis, monitor or discuss

various factors relevant to the condition, exclude potential associated comorbidities or prepare a coordinated health plan. It is also said that between 2012 and 2015 Dr Khamis failed to manage or monitor the patient's iron and haemoglobin levels in that he did not order iron and haemoglobin studies regularly or order recent haemoglobin values before venesections. Additionally, neither before nor after the venesections did he measure blood pressure and pulse rate.

44. Dr Khamis largely admits the particulars of the complaint but says that he did discuss alcohol intake, iron containing medications and exposure to the chemical dioxine with Patient C although he failed to make a note in his record. The Commission submitted that we should conclude that Dr Khamis was not to be believed and pointed to inconsistencies in his statements and in other material such as the medical reports obtained in respect of the first two s150 proceedings. It may well be that Dr Khamis is of the view that he would have discussed these matters with Patient C but there is no evidence that he did, and we are unable to conclude that he did so.

45. When it comes to the criticism that he failed to order iron and haemoglobin studies on a regular basis Dr Khamis refers to the table prepared by Dr Duncan and set out on pages 17, 18 and 19 of her report. There does not appear to be any particular or considered regularity in those studies, at least with respect to the venesections undertaken. However it does appear to be the case that even though Dr Khamis was without those iron and haemoglobin studies at particular times he nevertheless proceeded with the venesections without any apparent concern and without taking steps taken to ensure that those studies were obtained.

46. With respect to the issue of arranging for gene analysis, it is true that between 2013 Dr Khamis did not make those arrangements. However he had done so in December 2012 when he referred Patient D. In paragraph 96 of his first statement Dr Khamis says, "*It does not appear [Patient C] ever attended for these studies*". So even though Dr Khamis ordered the studies he did not follow up. Whilst excluding HIV and Hepatitis C may have been ideal, in the circumstances of this patient the failure to do so is not conduct that falls below the expected standard.

47. Dr Duncan's view was that, as particularised, Dr Khamis's conduct fell significantly below the expected standard. Even if Dr Khamis's arrangements for the gene analysis were adequate, and that he spoke to Patient C about risk factors, and that there were regular iron and haemoglobin studies we are of the view that Dr Khamis's conduct in relation to Patient C in not following up on the on the iron and haemoglobin levels is, of itself, conduct that was significantly below the standard reasonably to be expected of a practitioner of his equivalent level of training or experience.

48. Dr Khamis admits the particulars of his breach of the obligation to keep records. In the clinical records on 18 February 2015 he did not include adequate details of physical examination, the reason why he issued prescriptions for Panadeine Forte and Disprosone, and the reasons for pathology being ordered. In this regard he has breached his obligation by failing to record the information known to him, the clinical opinion he reached, and information sufficient to allow another medical practitioner to continue management of Patient C.

49. Dr Khamis gives no explanation or excuse for failing to meet his obligations and this is of particular concern given Dr Khamis's experience of the complaint in 2012 and his commitment at that time to maintain records in accordance with Schedule 2 of the *Health Practitioner Regulation (NSW) Regulation 2010*. Record keeping is an essential part of good medical practice. It is not difficult to meet the requirements of the Regulation. Dr Khamis had previously been warned about his record keeping, and he had undertaken to meet the requirements of the Regulation (Exhibit 1, Tab 8). In those circumstances we find proved the complaint of unsatisfactory professional conduct under s139B(1)(a) of the National Law.

Complaint Four A and Four B

50. Complaint Four deals with that the treatment afforded to Patient D, with a history of ischaemic heart disease, and seen by Dr Khamis on a number of occasions from 19 November 2014 to 9 March 2015. The allegation is that when Dr Khamis saw Patient D on 19 November 2014 he failed to adequately examine or assess him, provide instructions for follow up after a prescription for Seretide, request or organise an ECG and confirm whether he had attended an appointment with a cardiologist.

51. Dr Khamis says that he did assess Patient D's heart rate and rhythm, blood pressure and chest auscultation although he failed to so record in his clinical notes, (Exhibit A, Tab 1, paragraph 102). In the absence of any medical record it is difficult to be confident that Dr Khamis did in fact listen to Patient D's heart and lungs and take his blood pressure. Dr Khamis says he did, but at the same time he admits that he did not assess oxygen saturation or assess Patient D's weight and body mass index. We conclude the evidence is of what he would normally have done rather than Dr Khamis having a clear recollection of a particular examination with this particular patient, more than two years ago.

52. Even if we resolve that issue in Dr Khamis's favour it remains that his overall examination, assessment and treatment was particularly inadequate given this patient's history, the prescription for Seretide (a medication for asthma when the patient presented with chest pain), the failure to organise an ECG test and the failure to follow up with an appointment with a cardiologist. The events display a significant weakness in Dr Khamis's practice. We find that the care afforded to Patient D by Dr Khamis on 19 November 2014 fell significantly below the standard expected, and amounts to unsatisfactory professional conduct.

53. Complaint Four B concerns Dr Khamis's alleged unsatisfactory record keeping on 19 November 2014, 23 December 2014, and 9 March 2015, as well as Dr Khamis not including information that would enable other practitioners to understand Patient D's history and the future management plans for the continuity of his care. His failures amount to unsatisfactory professional conduct as defined in s139B(1)(b). Each of these incidents is of concern, but taken together, and in context of the warning in 2012, suggest the Dr Khamis has a particular weakness in the keeping of records.

Consideration of exercise of powers under s146B

54. Following an adjournment and consideration of the available evidence we informed the parties that the Complaint had been proved, and that we would be giving consideration to an exercise of power under s146B of the National Law.

55. There was no dispute that the exercise of power was to be protective of the public and the profession, rather than punitive (*Health Care Complaints Commission v Litchfield* (1997) 41 NSWLR 630). We should take a broad conception of protection of the public, and our decision may have a general deterrent effect beyond Dr Khamis (*Health Care Complaints Commission v Do* [2014] NSWCA 307, *Prakash v Health Care Complaints Commission* [2006] NSWCA 153).

56. Ms Petrie then tendered a bundle of documents (Exhibit 3) detailing an allegation that Dr Khamis had practised contrary to the conditions that had been imposed at the first s150 hearing and which had been continued after the second s150 hearing. Included in the bundle was data from Medicare listing prescriptions issued by Dr Khamis between 4 November 2015 and 29 May 2017. Ms Petrie also tendered an updated chronology (Exhibit 4), which included details of the recent s150 proceedings.

57. Ms Petrie handed up written submissions in relation to the ability of the Committee to receive what became Exhibits 3 and 4, and also written submissions in respect of our inquiry more generally. Although not required those submissions were of assistance.

58. Together the material was put forward on the basis it would assist the Committee to consider whether in all the circumstances orders were required under s146B of the National Law in order to protect the public interest.

59. Mr Jackson did not contest the Medicare records. Exhibit 3 includes a file note recording a conversation with Dr Khamis on 20 June 2017 where Dr Khamis acknowledges writing prescriptions but saying that he did not realise a condition that he was not to practise without supervision meant he could not prescribe, but is now aware. In a follow up email Dr Khamis said that most of the scripts were written for family members and close friends.

60. We have treated the material as making an allegation of breach of conditions, an allegation that has not yet been tested. Although the Medicare list appears extensive, many of the prescriptions were of repeats or given at the same time. The issue of the prescriptions might not be as frequent as first appears.

61. It appears that the receipt of the Medicare data prompted the Medical Council to suspend Dr Khamis's registration, and a few days later the suspension was lifted to permit Dr Khamis to have his name removed from the register. Whilst it is a matter for the Medical Council of NSW we expect the subject matter of the recent s150 proceedings would be revisited were Dr Khamis to seek registration.

62. Somewhat counter-intuitively, the submission of the Commission was that the tendered material demonstrated that Dr Khamis was not a person who would comply with conditions and therefore it was not appropriate to impose any conditions, nor was there any utility in doing so.

63. Both Ms Petrie and Mr Jackson submitted that a reprimand was the appropriate exercise of power.

Is a reprimand available under s146B?

64. Ms Petrie submitted that a reprimand was within the power of a Committee even when a practitioner was no longer registered.

65. Section 146A of the National Law provides that if the Committee finds the subject matter of a complaint proved it may exercise any power conferred on it by Subdivision (3) of Division 3. Relevantly s146B of the National Law sets out what the Committee may do in relation to *a relevant health practitioner*.

66. Section 146 of the National Law defines a relevant health practitioner as 'a health practitioner registered under this Law'.

67. Although Dr Khamis was registered under the National Law when the Complaint was made, as envisaged by s144, he was not so registered at the time of our inquiry.

68. Given that the power of the Committee in s146B(1) of the National Law is limited to a relevant health practitioner, meaning one registered under the National Law, it would appear that none of the listed items would be available to the Committee.

69. However s146B(2) provides:

> *If the relevant health practitioner is not registered, a direction may still be given under this section but has effect only so as to require the conditions concerned to be imposed when the health practitioner is registered.*

70. That subsection would appear to provide certain powers to the Committee that may be exercised even if the practitioner is not registered at the time of the inquiry.

71. The subsection refers to 'a direction' being able to be given under the section. Subsection 146B(3) contains the words *'makes an order or directs that any condition be imposed'* which suggests that an order and a direction are different exercises of power. Subsection 146B(1)(a) refers to a caution or reprimand, while subsection (1)(c) to (f) refer to orders that may be made. It is only subsection 146B(1)(b) that contains a reference to conditions and the ability to impose conditions on a practitioner's registration. It is clear by subsection (2) that the powers of the Committee to deal with a practitioner who is not registered are limited to a direction that conditions be imposed when the health practitioner is registered.

72. There appears to be no ability to caution or reprimand the practitioner or to make any orders of the kinds listed in subsection (c) to (f). That interpretation makes sense within the scheme of the legislation. If a practitioner is no longer registered there is no utility in making orders of those kinds that might otherwise be available. Nor is there any particular value in issuing a caution or reprimand to a practitioner who is not then registered. However, there is utility in making a direction that conditions be imposed were a practitioner to become registered. It would be at that stage that the public interest would need protection.

73. Ms Petrie also submitted that it would be inappropriate to make a direction to impose a condition, as the condition would not apply until some time in the future of which the Committee would have no present knowledge. Whether and what conditions might be made are a matter for particular circumstances but it is plain from the existence of subsection 146B(2) of the National Law contemplates that there will be circumstances where the Committee might make such a direction about conditions that would apply in the future.

74. It should be kept in mind that conditions, even those imposed on a registered practitioner, apply in the future having been made for the future protection of the public based on the information presently available. The same may apply in the case of a practitioner not registered at the time of an inquiry.

75. In our view we do not have power to reprimand Dr Khamis, even if it would be appropriate to do so were Dr Khamis still registered. We do not make any decision in that regard. We do not believe s146B(2) can be read as direction for a condition that a reprimand issue on registration. The power is one of imposing conditions – a reprimand is not a condition.

76. Now that Dr Khamis is no longer registered our power is limited to making a direction under s146B(2) of the National Law, and that is the means of protecting the public. Not to make a direction would leave Dr Khamis's registration open and unconditional, and dependent on AHPRA intervening in the registration process or the Medical Council proceeding under s150 of the National Law. Those matters are for others and are not within the scope of our inquiry. It is our task to deal with the Complaint before us, and to act in the public interest. If no direction were made then all that would remain would be our statement of reasons, and Dr Khamis then able to register without any conditions at all.

Should we make a direction?

77. Ms Petrie submitted that there was no need to make a direction as to conditions as the ordinary process of reregistration with AHPRA would lead to the raising of any issues that needed to be considered at that time, and the most recent s150 proceedings would be the trigger for action by the Medical Council of NSW.

78. Whilst the National Law does provide for such checks at the time of registration, it seems to us that to take that approach would deprive s146B(2) of any practical operation.

79. Action under s150 is only available in respect of a registered practitioner. Now that Dr Khamis is unregistered it is not clear that he could be the subject of a complaint under s144 of the National Law, at least not until he were registered.

80. Even though Dr Khamis says he has no intention of seeking reregistration it remains that he may change his mind and could reapply at any time. He could not be prevented from doing so. Were Dr Khamis registered we would impose conditions on his practice. The Committee has the ability to impose conditions on his practice were he to register, and those conditions would apply from the moment of registration.

Direction as to conditions

81. Above, we have set out our assessment of the Complaint and Dr Khamis's conduct and found the Complaint proved. Although Dr Khamis often reached the right diagnosis he did not collect all the information that would have been useful in treatment. He did not follow up develop plans of management. He failed to make adequate records.

82. The events of the Complaints took place within the ordinary or typical experience of a general practitioner in rural practice, and throughout a period of a few years. Dr Khamis left the practice in April 2015, and continued attending some nursing home patients until October 2015, when he ceased to practice (putting aside any conclusion that may be drawn from the documents in Exhibit 3). The information we have does not demonstrate that Dr Khamis has been diligent or thorough in keeping up to date professionally or in meeting or maintaining his training requirements. The information available leads us to conclude that Dr Khamis has not practised in the recent period at the high standard we expect he did in the past.

83. Even allowing for his formal admissions we do not have any useful information or explanation from Dr Khamis about his particular circumstances at the time of the events, nor do we have any understanding of how he sees his own conduct, or how he reflects on his work. Dr Khamis may have been lackadaisical in the provision of care, or perhaps he was not as enthusiastically interested in his patients as is to be hoped. He may have been unwittingly slowing down and no longer putting in the effort that the public is entitled to expect. Whilst there was a suggestion of cognitive impairment, it is unknown if that may have been a factor in his treatment of the four patients. Dr Khamis provided some limited information about his current health, and acknowledges his health has been a factor in him withdrawing from practice.

84. We conclude that Dr Khamis should not be in practice unsupervised, and he should only practice with others. Despite having completed an online course Dr Khamis needs to demonstrate he has absorbed and understood what is required. There are unanswered questions about his state of health and whether it may have any impact on his practice.

85. Were Dr Khamis to return to practice he will be required to meet then current requirements and may face additional conditions considered necessary by the National Board.

86. In our view the public will be protected by a direction that the following conditions apply when Dr Khamis is registered under the National Law.

Practice Conditions

1. To practise only in a group practice approved by the Medical Council of NSW where:

    - there are at least two medical practitioners (excluding the subject practitioner),

- the patients and patient records are shared between the medical practitioners and where he is not the only medical practitioner at the practice at any time.

2. Not to conduct home visits or nursing home visits.

3. To practise under category B supervision in accordance with the Medical Council of NSW's Compliance Policy – Supervision (as varied from time to time) and as subsequently determined by the appropriate review body.

    (a) At each meeting the practitioner is to review and discuss his practice with his approved supervisor with particular focus on:

        (i) Clinical performance

        (ii) Medical records

        (iii) Patient follow-up

        (iv) Clinical outcomes.

    (b) To authorise the Medical Council of NSW to provide proposed and approved supervisors with a copy of this statement of decision and the conditions on the practitioner's registration.

4. Within one month of registration to provide the Medical Council of NSW the following:

    (a) A summary prepared by him of the relevant legislation and guidelines on the keeping of good medical records. This summary must describe the information to be included in a patient record.

    (b) An overview of the steps he has taken to ensure the creation and keeping of good medical records.

Health Conditions

5. To attend for treatment by a general practitioner of his choice. The frequency of treatment is to be determined by the treating practitioner. The practitioner:

    (a) is to authorise the treating practitioner to inform the Medical Council of NSW of failure to attend for treatment, termination of treatment, or a significant change in health status (including a significant temporary change); and.

    (b) must provide the Medical Council of NSW with the professional details of the treating practitioner

Appeal and review rights

Dr Khamis has the right to appeal this decision to the NSW Civil and Administrative Tribunal.

An appeal must be lodged with the Tribunal within 28 days of the date of this statement of decision.

Dr Khamis has the right to seek a review by the Medical Council of NSW of the conditions when registered. The Medical Council is to be the appropriate review body for the purposes of Part 8, Division 8 of the *Health Practitioner Regulation National Law (NSW).*

Sections 125 to 127 of the National Law are to apply whilst Dr Khamis's principal place of practice is *anywhere* in Australia other than in New South Wales, so that a review of these conditions can be conducted by the Medical Council of New South Wales.

Non-publication direction

The non-publication order with respect to the names and any identifying features of Patient A, Patient B, Patient C and Patient D, as well as the patient making the 2012 complaint is continued indefinitely.

Distribution of decision

A copy of this statement of decision may be published in full and will be provided to the Health Care Complaints Commission, Dr Khamis, the Medical Council of NSW, and the National Board.

Mark Paul
Chairperson

15 September 2017

Attachment 1

The **Health Care Complaints Commission** of Level 13, 323 Castlereagh Street, Sydney, NSW, having consulted with the **Medical Council of New South Wales** in accordance with sections 39(2) and 90B(3) of the *Health Care Complaints Act 1993* and section 145A of the *Health Practitioner Regulation National Law* (NSW) *('the National Law')*;

HEREBY COMPLAINS THAT

Dr Baderudin Khamis of **PO Box 165 WAUCHOPE NSW 2446,** being a medical practitioner registered under the *National Law* ("the practitioner"),

COMPLAINT ONE A

Is guilty of unsatisfactory professional conduct under section 139B (1)(a) of the *National Law* in that the practitioner has engaged in conduct that demonstrates the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

Each particular in itself justifies a finding of unsatisfactory professional conduct. In the alternative, when two or more particulars are taken together, a finding of unsatisfactory professional conduct is justified.

BACKGOUND TO COMPLAINT ONE A

The practitioner obtained his medical degree in 1975 from the Royal College of Physicians and Surgeons in Ireland. In 1978, the practitioner first became registered to practice in New South Wales.

At all relevant times, the practitioner was working as a General Practitioner at the Hastings Medical Practice ("**Medical Practice")** in Wauchope.

Patient A was an elderly woman who regularly received treatment at the Medical Practice including by the practitioner.

On 4 December 2014, Patient A attended Macquarie Base Hospital complaining of worsening back and shoulder pain and a cough. During her hospital admission, Patient A was diagnosed with Polymyalgia Rheumatica and possible Giant Cell Arteritis.

Following her discharge from Hospital on 12 December 2014, Patient A also attended the Medical Practice for a follow up appointment with the practitioner.

PARTICULARS OF COMPLAINT ONE A

1. On 12 December 2014, the practitioner failed to adequately examine or assess Patient A in that he did not:
   a) conduct a musculoskeletal examination;
   b) order or consider a plan for future pathological testing, in relation to erythrocyte sedimentation rate **("ESR"**) or c-reactive protein (**"CRP"**) values.

2. On 12 December 2014, the practitioner failed to develop an adequate management plan for Patient A's Polymyalgia Rheumatica in that he did not outline:
   a) medication details;
   b) whether Patient A was already taking Prednisone;
   c) whether Patient A's dose of Prednisone needed to be reduced and if so, at what rate;
   d) formulate or document a further management plan in respect of Patient A's ongoing treatment with prednisone;
   e) who would monitor Patient A's ESR or CRP and how often.

COMPLAINT ONE B

Is guilty of unsatisfactory professional conduct under section 139B(1)(b) of the National Law in that the practitioner has contravened the NSW Regulations under the National Law.

BACKGROUND TO COMPLAINT ONE B

As for Complaint 1A

PARTICULARS OF COMPLAINT ONE B

1. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to Patient A's clinical record of 13 January 2014, in that despite a diagnosis of vertigo, the practitioner failed to record any examination findings including:
   a) blood pressure sitting and standing;
   b) comment upon nystagmus;
   c) comment upon heart rate and rhythm;
   d) ENT examination;
   e) neurological notes.

2. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to Patient A's clinical record of 12 December 2014, in that the practitioner failed to:
   a) document Patient A's recent admission to Macquarie Base Hospital;
   b) include notes as to Patient A's symptoms or results from a physical examination;
   c) record any proposed treatment plan for Patient A's condition.

3. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to Patient A's clinical record of 16 December 2014, in that the practitioner failed to:
   a) document the CRP ordered by Dr Prowse;
   b) record that Patient A was to follow up with Dr Prowse two weeks after discharge.

4. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to the overall clinical record for Patient A, in that the practitioner failed to include information that would enable other practitioner to understand Patient A's current management for the continuity of her care.

BACKGROUND TO COMPLAINT TWO A

The practitioner obtained his medical degree in 1975 from the Royal College of Physicians and Surgeons in Ireland. In 1978, the practitioner first became registered to practice in New South Wales.

At all relevant times, the practitioner was working as a General Practitioner at the Hastings Medical Practice ("**Medical Practice")** in Wauchope.

Patient B, a 24 year old woman had attended the Medical Practice on four occasions and consulted other doctors prior to consulting the practitioner.

On 6 March 2015, Patient B first saw the practitioner after an ultrasound suggested her condition was consistent with bilateral hemodynamically significant stenosis.

During this consultation the practitioner diagnosed Patient B with Bilateral Renal Artery Stenosis, wrote a referral to a vascular surgeon and provided Patient B with a prescription for Olmesartan.

PARTICULARS OF COMPLAINT TWO A

1. On 6 March 2015 the practitioner failed to adequately examine or assess Patient B in that he failed to:
   a) Measure:
      i) Patient B's weight;
      ii) Patient B's blood pressure;
   b) investigate by means of urinalysis;

2. On 6 March 2015, the practitioner prescribed Olmesartan to Patient B and failed to adequately manage the patient's treatment with the medication in that he did not:
   a) order follow up pathology of:
      i) creatinine;
      ii) electrolyte levels;
      iii) UREA;
   b) order follow up blood pressure recordings within the first month of treatment.

COMPLAINT TWO B

Is guilty of unsatisfactory professional conduct under section 139B(1)(b) of the National Law in that the practitioner has contravened the NSW Regulations under the National Law.

BACKGROUND TO COMPLAINT TWO B

As for Complaint 2A

PARTICULARS OF COMPLAINT TWO B

1. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to Patient B's clinical record of 6 March 2015, in that the practitioner failed to document:
   a) any subjective findings;
   b) the results of any physical examination of the patient;
   c) clinical reasoning supporting the diagnosis of Bilateral Renal Artery Stenosis;
   d) the reason for prescribing Olmesartan;
   e) a coordinated health plan.

BACKGROUND TO COMPLAINT THREE A

The practitioner obtained his medical degree in 1975 from the Royal College of Physicians and Surgeons in Ireland. In 1978, the practitioner first became registered to practice in New South Wales.

At all relevant times, the practitioner was working as a General Practitioner at the Hastings Medical Practice ("**Medical Practice")** in Wauchope.

Patient C was a 55 year old man suffering from Porphina Cutanea Tarda. From 2012 to July 2013, Patient C had attended upon the Medical Practice for regular venesections which were either performed by the practitioner or the practice nurse.

From December 2014, Patient C began having regular venesections again at the Medical Practice. Patient C saw the practitioner on a few occasions between December 2014 and 19 March 2015.

On 19 March 2015, Patient C, presenting as pale and lethargic, was seen at the Medical Centre by another practitioner. Patient C was thought to be suffering from pneumonia and transferred to hospital via ambulance. A diagnosis of pneumonia was later confirmed.

PARTICULARS OF COMPLAINT THREE A

1. Between 2013 and 2014**,** the practitioner failed to adequately manage Patient C's Porphyia Cutanea Tarda condition in that he did not to:
   a) arrange for gene analysis;
   b) monitor or discuss factors including:
      (i) alcohol intake;
      (ii) iron containing medications;
      (iii) exposure to the chemical dioxin;
   c) exclude potential associated comorbidities including:
      (i) HIV;
      (ii) Hepatitis C;
   d) prepare a coordinated health plan.

2. Between the years 2012 to 2015, the practitioner failed to adequately manage or monitor iron and haemoglobin levels for Patient C in that he did not:
   a) order iron and haemoglobin studies regularly;
   b) order recent haemoglobin values before organising venesections;
   c) either before or after the venesections measure indicators relevant to management, namely:
      (i) blood pressure;
      (ii) pulse rate.

COMPLAINT THREE B

Is guilty of unsatisfactory professional conduct under section 139B(1)(b) of the National Law in that the practitioner has contravened the NSW Regulations under the National Law.

BACKGROUND TO COMPLAINT THREE B

As for Complaint 3A

PARTICULARS OF COMPLAINT THREE B

1. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to Patient C's clinical record of 18 February 2015, in that the practitioner failed to include adequate details as to:

a) subjective findings;
b) results of any physical examination of the patient;
c) clinical reason as to why Panadeine Forte and Disprsome 0.05% was prescribed;
d) clinical reason as to why pathology was ordered;

BACKGROUND TO COMPLAINT FOUR

The practitioner obtained his medical degree in 1975 from the Royal College of Physicians and Surgeons in Ireland. In 1978, the practitioner first became registered to practice in New South Wales.

At all relevant times, the practitioner was working as a General Practitioner at the Hastings Medical Practice ("**Medical Practice")** in Wauchope.

On 19 November 2014, Patient D, an elderly male who had a history of ischaemic heart disease, attended upon the practitioner at the Medical Centre complaining of chest tightness and exertion.

Patient D also consulted the practitioner on 23 December 2014, 7 January 2015 and 27 February 2015.

On 8 March 2015, Patient D presented to the emergency department of Port Macquarie Hospital following two episodes of central chest pain. He was discharged the same day into the care of the practitioner with the referral letter recommending earliest review by a cardiologist.

On 9 March 2015, Patient D was seen by the practitioner who provided him with a referral to a cardiologist.

On 27 March 2015, Patient D died from ischaemic heart disease and myocardial infarction.

PARTICULARS TO COMPLAINT FOUR A

1. On 19 November 2014, the practitioner failed to adequately examine or assess Patient D by failing to:
   a) assess Patient D's:

i. heart rate and rhythm;
ii. blood pressure;
iii. oxygen saturation;
iv. chest auscultation;
v. weight and body mass index;

b) provide instructions for follow up after having prescribed the medication Seretide;
c) request or organise an ECG test for Patient D;
d) confirm whether Patient D had attended an appointment with a cardiologist.

COMPLAINT FOUR B

Is guilty of unsatisfactory professional conduct under section 139B(1)(b) of the National Law in that the practitioner has contravened the NSW Regulations under the National Law.

BACKGROUND TO COMPLAINT FOUR B

As for Complaint 4A

PARTICULARS OF COMPLAINT FOUR B

1. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to Patient D's clinical record of 19 November 2014, in that the practitioner failed to record adequate examination findings such as:
   a) heart rate and rhythm;
   b) blood pressure;
   c) oxygen saturation;
   d) chest auscultation;
   e) weight and BMI.

2. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to Patient D's clinical record of 23 December 2014, in that the practitioner, having prescribed Norvasc and Clopidogrel and altered the dose of Nexium, did not include adequate details as to:
   a) subjective findings;
   b) results of any physical examination of the patient;

c) blood pressure;
d) pulse reading.

3. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to Patient D's clinical record of 9 March 2015, in that the practitioner failed to include adequate details as to:
   a) subjective findings;
   b) results of any physical examination of the patient;
   c) clinical thinking and reasoning.

4. The practitioner contravened Clause 7 and Schedule 2 of the *Health Practitioner Regulation (New South Wales) Regulation 2010* in relation to the overall clinical record for Patient D, in that the practitioner failed to include information that would enable other practitioners to understand Patient D's history and future management plans for the continuity of his care.
