PROFESSIONAL STANDARDS COMMITTEE INQUIRY

Constituted under Part 8 of *the Health Practitioner Regulation National Law (NSW)*
to hold an Inquiry into a Complaint in relation to:

Dr Nirmit Milan Sheth

Date of Inquiry:	3 August 2017
Committee members:	Ms Geri Ettinger, Chairperson Dr Margaret Higgins Dr Jon Fogarty Honorary Associate Professor Paul Macneill
Appearance for Health Care Complaints Commission:	Mr Anthony Britt of Counsel, instructed by Ms Jaimee Dinihan, Legal Officer.
Appearance for Dr Nirmit Milan Sheth:	Ms Kathy Sant of Counsel, instructed by Ms Louise Watson of DibbsBarker.
Date of decision:	17 August 2017
Decision	The Committee made findings of unsatisfactory professional conduct and determined to reprimand the Practitioner, and impose conditions on his practice.
Publication of decision:	The Chair made non-publication orders with regard to the identity of Patient A and Patient B.

SUMMARY

1. Dr Nirmit Milan Sheth MED0001131422, MPO508913, aged 36, is a registered medical practitioner who graduated as Bachelor of Medicine, Bachelor of Surgery, University of Health Sciences, Maharashtra in 2003. Dr Sheth has to date incurred no conditions on his practice since being registered in NSW, and is currently practising in Broken Hill, NSW.

2. The events which gave rise to a Complaint made on 15 December 2016 by the NSW Health Care Complaints Commission (HCCC) that Dr Sheth was guilty of unsatisfactory professional conduct relate to a failure to observe appropriate professional boundaries. It was alleged that those boundaries were breached in that he entered into a sexual relationship with Patient A between approximately July and September 2013 in circumstances when he last saw Patient A as a patient in mid-June 2013.

3. The HCCC also alleged in its Complaint, the Amended Complaint tendered on 3 August 2017, the day of the Inquiry, that Dr Sheth incurred failures in communication and management of Patient A in May and September 2013. Further, that he contravened various Regulations of the *Health Practitioner Regulation (NSW) Regulation 2010* (the Regulations), in regard to medical records. The HCCC also alleged that in relation to Patient B, Dr Sheth contravened clause 7 and Schedule 2, clause 1 of the Regulations in regard to medical records.

4. Dr Sheth admitted Particular 1 of Complaint One in relation to the sexual conduct, and admitted that his conduct constituted unsatisfactory professional conduct.

5. The Committee noted that Dr Sheth was not Patient A's usual doctor, and that at most, he saw her professionally at the Broken Hill practice on two occasions in early 2013, the last on 12 June 2013. We noted that Patient A was a nursing sister with long standing diabetes which she managed with the assistance of an endocrinologist, and that she had been a nurse for some 25 years. As she worked in the same practice as Dr Sheth, he would no doubt have had access to her medical files, although there was no allegation that he accessed those incorrectly at any time.

6. Patient A was not called to give evidence at the Inquiry. We draw no adverse inferences from that.

7. The Committee constituted to hear the abovementioned Complaint heard the evidence in relation to the Complaint, and made a finding of unsatisfactory professional conduct in relation to Complaint One. The Committee ordered a Reprimand, and that certain conditions be imposed on Dr Sheth's practice, as discussed below.

THE COMPLAINTS OF THE HCCC

8. The Amended Complaints dated 3 August 2017, as agreed between the parties, were before the Committee. The HCCC alleged that in relation to Complaint One, Dr Sheth is guilty of unsatisfactory professional conduct under section 139B of the *National Law*, and that in relation to Complaint Two, he is guilty of unsatisfactory professional conduct pursuant to section 139B(1)(b), in that he has:

   (i) 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; and/or

   (ii) engaged in improper or unethical conduct relating to the practice or purported practice of medicine.

9. The HCCC alleged that each Particular in itself justifies a finding of unsatisfactory professional conduct. In the alternative, when two or more of the particulars are taken together, a finding of unsatisfactory professional conduct is justified.

10. In relation to Complaint Two, the HCCC alleged that the practitioner contravened clause 7 of the Regulations, in that he failed to make an entry in Patient A's medical record in relation to the Particulars of Complaint discussed below.

ISSUES

11. The Committee must consider the evidence before it, including that of the peer reviewer, Dr Stephen Howle, and the submissions and legislation.

12. The issues to be determined by this Committee are:

    a. Whether the Committee is reasonably satisfied that any or all of the Particulars of the two Complaints are proven;

    b. If so, whether the practitioner's conduct overall amounts to unsatisfactory professional conduct; and

    c. If such unsatisfactory finding is made, the Committee must decide whether orders or directions made pursuant to Part 8 Division 3 Sub-division 3 of the *National Law* are appropriate.

RELEVANT LAW

13. In matters such as the ones before the Committee, the HCCC bears the onus of establishing that the practitioner has been guilty of unsatisfactory professional conduct pursuant to section 139B, of the *National Law* and/or section 139B(1)(b) of the Regulations.

14. It is well established, due to the protective nature of the jurisdiction, and the seriousness of the complaints, if established, both for the practitioner and the public, that the standard of proof is on the balance of probabilities, but to the level of satisfaction described by the High Court in *Briginshaw v Briginshaw (1938) 60 CLR 336.* The Court stated:

    Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and 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 produced by inexact proofs, indefinite testimony, or indirect inferences.

15. **(1) Unsatisfactory professional conduct** of a registered health practitioner includes:

(a) Conduct significantly below reasonable standard

Conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of practitioner's profession is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

(b) Contraventions of this Law or regulations

A contravention by the practitioner (whether by act or omission) of a provision of this Law, or the regulations under this Law or under the NSW regulations, whether or not the practitioner has been prosecuted for or convicted of an offence in respect of the contravention….

16. The phrase *significantly below* is not defined in the *National Law.* However in the Second Reading speech when the *National Law's* predecessor, the *Medical Practice Act 1992* (which contained a similar definition of unsatisfactory professional conduct), was introduced to Parliament it was stated that:

The first main purpose of the bill is to refocus the Health Care Complaints Commission (HCCC) on investigating serious complaints about health service providers. To achieve this, Commissioner Walker recommended that unsatisfactory professional conduct be redefined so that only significant instances involving lack of skill, judgment, or care will result in an investigation or disciplinary action. …. the reference to 'significant' in that context may refer to a single act or omission that demonstrates a practitioner's lack of skill, judgment or care, or it may refer to a pattern of conduct. In any individual case, that will depend on the seriousness of the circumstances of the case.

17. We note also that as a general principle, the use of the term *significant* may in law be taken to mean not trivial, of importance or substantial, (*Re A Medical Practitioner and the Medical Practice Act 40010/07, 3 September 2007* (unreported)).

18. The standard by which Dr Sheth must be judged is that of a registered Medical Practitioner who graduated in medicine from the University of Health Sciences, Maharashtra in 2003, and who has been a registered Medical Practitioner in NSW, since January 2010. He is experienced in practising in a country practice consisting of approximately 14 doctors.

DISCUSSION OF THE COMPLAINTS, AND FINDINGS

Complaint One, Particular 1.

19. The HCCC alleged that: *between approximately July 2013 and September 2013, the practitioner failed to observe appropriate professional boundaries in that he entered into a sexual relationship with Patient A in circumstances where the practitioner last consulted Patient A as a patient in mid-June 2013.*

20. Dr Sheth admitted Particular 1 of Complaint One in correspondence from his lawyers to the HCCC as early as 24 March 2015, and agreed that although the relationship with Patient A was on a consensual basis, he apologized to Patient A, the HCCC, and the medical profession and community for potentially bringing the practice of medicine into disrepute. We noted that he did not admit that he was guilty of unsatisfactory professional conduct in regard to that conduct until his lawyers wrote to the HCCC in July 2017. We do not draw any adverse inferences from the date of his admission that he was guilty of unsatisfactory professional conduct.

21. Patient A, who did not give oral evidence at the Inquiry, provided written evidence. She and Dr Sheth both confirmed they had been out with each other and others at various social functions in early 2013. Both confirmed that a sexual relationship had commenced in approximately mid-July 2013. Dr Sheth did not dispute Patient A's information that the last time they had sex was 23 August 2013.

22. Dr Howle provided evidence regarding the seriousness of the breach of boundaries by Dr Sheth with reference to a document of the The Medical Board of Australia entitled *Sexual Boundaries: Guidelines for doctors* (Guidelines). He commented on the short duration of care of Patient A by Dr Sheth, and in particular the short time of approximately a month after the last consultation on 12 June 2013 when the friendship developed into sexual

relations. He also commented on the level of dependence and vulnerability of the Patient, concluding that the breach of the Guidelines was not of the highest culpability. He opined however, that the conduct was significantly below the expected standard and invited his strong criticism.

23. The Committee is satisfied to the requisite standard, based on the evidence before it, including that of Dr Sheth and Dr Howle, and taking into account the Guidelines that Dr Sheth's conduct in regard to his relationship with Patient A, constituted unsatisfactory professional conduct.

Complaint One Particular 2 and Complaint Two Particular 1.d.

24. The HCCC alleged that: *on or around 9 September 2013 the practitioner failed to appropriately manage a report of medical symptoms and a possible medical emergency from Patient A by telephone using words to the effect that 'I am bleeding from my vagina with clots', in that he*

a. responded using words to the effect of 'No you are not, you are lying and just attention seeking';
b. responded without:
(i) consulting Patient A;
(ii) conducting a proper physical or psychological assessment of Patient A.

25. The scenario above relates to a telephone call made by Patient A to Dr Sheth, on his private mobile telephone, which was likely to have occurred on 7 September 2013. Nothing turns on the HCCC's allegation that it was on or about 9 September 2013. At that time Dr Sheth and Patient A were still friends, but no longer in a sexual relationship, the latter having ended on 23 August 2013.

26. Dr Sheth told the Committee that Patient A called on Saturday, 7 September 2013, when according to him, he was not on call, did not have his work telephone with him, and was having lunch at a restaurant. We noted that Dr Sheth, admitted when giving his evidence that he and Patient A had given each other their personal mobile numbers, so that the call on his private mobile telephone was not of note.

27. At the Inquiry, Dr Sheth denied responding to the telephone call in terms of accusing Patient A of lying or attention seeking as alleged by the HCCC. His evidence was that the call was not a consultation, and that he accordingly did not conduct either a physical or psychological assessment of Patient A.

28. When asked whether Patient A had called him because he was a friend or a doctor, his replies were equivocal. He told us however, that he advised her that if the bleeding was more severe than normal, to go to the ED at Broken Hill Hospital.

29. Patient A's account in her written statement, of the 7 September 2013 call to Dr Sheth, was, she recalled it was *about 9 September 2013*. She stated that she said: *I had called Nirmit with words to the effect of 'I am bleeding and having a miscarriage'.* Patient A's account was that Dr Seth replied as follows: *'No, you are not, you are lying and just attention seeking'.*

30. Dr Howle opined that if Patient A was calling Dr Sheth for professional advice as a doctor, then her version of his reply appears unprofessional in that he may have dismissed a possible medical emergency without seeing the patient and making a proper assessment. Further he did not document the call or the conversation in Patient A's medical notes. Dr Howle considered this to be significantly below the standard expected and noted it attracted his strong criticism.

31. Dr Howle opined that if Patient A had been calling Dr Sheth as a former lover and not as a doctor, then the advice to her was rather callous. Dr Sheth agreed that Patient A may have perceived his reply to her as dismissive.

32. We noted that Complaint Two, Particular 1.d. alleges that: *Dr Sheth failed to make an entry in Patient A's medical record in relation to a consultation he conducted with Patient A by telephone on or around 9 September 2013.*

33. The Committee was satisfied that the telephone call to Dr Sheth on 7 September 2013 from Patient A, was from a friend and ex-lover. Accordingly, although Dr Sheth cannot at any time, abrogate his responsibilities as a medical practitioner, we are satisfied that he was not providing a medical service to Patient A during that telephone call. Accordingly we are satisfied, and accept his evidence that when he spoke to Patient A, he advised her to

attend at the ED at Broken Hill Hospital if the bleeding appeared more severe than usual. We are satisfied that he was, in that role, not required to consult further with Patient A or conduct a physical or psychological assessment of her. We find Complaint One Particular 2 not proven.

34. We are also satisfied that Complaint Two Particular 1.d. is not proven in that given the circumstances, the call was not treatment or the provision of medical services, and that Dr Sheth was accordingly not required to make an entry in Patient A's medical record

35. We take into account also the undisputed evidence that Patient A was a registered nurse, and had been so for some 25 years so that she can be assumed to have known how to deal with the bleeding. The records do not indicate that she attended at Broken Hill Hospital on that day.

Complaint One Particular 3. and Complaint Two Particular 1.a.

36. The HCCC alleged that *on or around 24 May 2013 the practitioner failed to adequately communicate with the Emergency Department (ED) of the Hospital in respect of the medical condition of Patient A whom he accompanied to the ED when the patient was suffering from a 'hypoglycaemic attack' including in that he did not provide a referral letter.*

37. Dr Sheth's evidence was that on 24 May 2013, Patient A telephoned him on his personal mobile telephone, to inform him she had a problem with her blood sugar, and needed to go to hospital. There was conflict of evidence regarding whether Dr Sheth offered to drive Patient A to the Hospital, or whether she asked him to take her. Given that Complaint One Particular 3 does not raise this issue that is probably not a matter the Committee needs to resolve.

38. We accept Dr Sheth's evidence that he went to Patient A's home, picked her up and drove her to the Hospital, where he handed her over to a triage nurse. His evidence which we accept was that, being approximately 9:00am, he then left for work. Contrary to Patient A's evidence that Dr Sheth informed the Hospital that he was her treating doctor, we found that the Hospital records did not indicate that.

39. Further, the Committee noted that Patient A was not hypoglycaemic as stated in Particular 3, but that given the medical records at Tab 24 of Exhibit H1, indicating *glucose 28.7/nmol.L,* she was hyperglycaemic. We are satisfied that insulin dependant diabetes was a long term condition for Patient A, and one with which she would be familiar. We are also mindful that she is a nurse with 25 years experience.

40. Dr Howle opined that Dr Sheth had responded to a medical emergency rapidly by taking Patient A to the Hospital. He was not critical of that action; rather that it could be commended. He was however critical of the fact Dr Sheth did not make any clinical record in the Patient's file, and did not provide a letter of referral to the Hospital. He considered that to be below the expected standard of a practitioner of equivalent level of training or experience, noting in particular that the incident was serious enough to require the Patient to be hospitalised.

41. Having heard the evidence, the Committee was satisfied to the requisite standard that Dr Sheth attended on 24 May 2013 to assist Patient A as a friend, and to take her to the Hospital. We are satisfied that he agreed it was necessary she go when he saw her. We were satisfied that, even though Dr Sheth was not providing a medical service to Patient A, he had carried out his professional obligations in agreeing that Patient A needed to go to Hospital, and as a friend, to take her there.

42. We were satisfied that the Hospital records did not nominate Dr Sheth as Patient A's treating doctor, and that he felt free to proceed to work (which commenced at 9:00am), once he had handed Patient A over to a triage nurse. We did not consider he was, given the circumstances, required to provide a referral letter. The Committee was satisfied on the evidence that Complaint One Particular 3 was not proven.

43. We noted also that in Complaint Two Particular 1.a., the HCCC alleged that Dr Sheth failed to make an entry in Patient A's record in regard to the fact of and circumstances surrounding her admission to the ED of the Hospital on 24 May 3013, and that this constituted a breach of the Regulations.

44. We have already found in the paragraphs above that Dr Sheth was not providing a medical service to Patient A on 24 May 2013, that he was not her

treating doctor. Accordingly, we are satisfied that there was no requirement to make an entry in her medical records. Complaint Two Particular 1.a. is not proven.

Complaint One Particular 4

45. The HCCC alleged that *sometime shortly after 12 June 2013 the practitioner failed to observe appropriate professional boundaries in that during a personal meeting at his home with Patient A he provided medical treatment to the patient including in that he advised Patient A to take two brown tablets he described as, using words to the effect of, 'pain killers and a relaxant….from India' and supplied the tablets to her.*

46. We have already noted from the evidence that Dr Sheth, Patient A and others from the practice socialised in the months preceding, and after 12 June 2013, although it was agreed between the parties that a sexual relationship between Patient A and Dr Sheth did not commence until mid-July.

47. We have noted that Patient A consulted Dr Sheth on 12 June 2013 with regard to a fall at work during which an injury occurred, and that this was documented in the Patient's records. We are mindful that that is the last entry by Dr Sheth with regard to Patient A.

48. However, Patient A indicates in her statement that there was a second consultation with regard to her injury, and that she was visiting Dr Sheth's home shortly after 12 June 2013. She alleges he supplied *brown tablets* from India to her as pain killers or muscle relaxants. Patient A states that she took the tablets, but did not further inform what effect, if any, they had.

49. Dr Sheth has, since he first corresponded with the HCCC, denied providing any *brown tablets* to Patient A as alleged by the HCCC. He emphasised in his oral evidence that he did not supply *brown tablets* to Patient A.

50. If indeed he did so, and thus provided a medical service without making a medical record, then that would be a breach of his obligations. Dr Howle considered that if such a visit took place, and given there was no record of the visit or any *brown tablets*, Dr Sheth's conduct would be seen to be

significantly below what is reasonably expected, and would attract his strong criticism.

51. However the Committee has found, as stated in the paragraphs above that it was satisfied Dr Sheth did not provide any medical services to Patient A after 12 June 2013.

52. The Committee did not have sufficient evidence about any *brown tablets* or their content, and declines to resolve the factual conflict of evidence regarding the supply of *brown tablets.*

53. Accordingly, the Committee declines to make a finding regarding the provision of *brown tablets* by Dr Sheth to Patient A. The Particular of Complaint is not proven.

Complaint Two Particular 1.b. and Particular 1.c.

54. In Particular 1.b, the HCCC alleged that *Dr Sheth failed to make an entry in Patient A's medical record in relation to a consultation he conducted with the patient at BHGPSC sometime shortly after 12 June 2013.*

55. In Particular 1.c., the HCCC alleged that *Dr Sheth failed to make an entry in Patient A's medical record in relation to a consultation he conducted he conducted with the patient at the practitioner's home sometime shortly after 12 June 2013.*

56. As both Particulars cited above deal with the same time frame, we have decided to deal with them together.

57. We have accepted that Dr Sheth was not Patient A's usual treating doctor. However in a group practice, and in the country in particular, a staff member of a practice, would generally seek out another doctor in the practice if her usual practitioner was not available. This was confirmed by Dr Howle in his evidence. He also cautioned that this practice caused potential conflicts and boundary crossing, particularly where friendships developed between staff members and doctors.

58. We have accepted above that Patient A only consulted Dr Sheth on two occasions at the Broken Hill practice in 2013, with the last being 12 June 2013.

59. We have dealt with the issues raised in Complaint Two Particular 1.b. and Particular 1.c. above. We have accepted that there was no further consultation at the Broken Hill practice after 12 June 2013. Accordingly, we are satisfied that no entry made in Patient A's medical records, and that that was appropriate.

60. The Committee did not have sufficient evidence about any *brown tablets* or their content, and declines to resolve the factual conflict of evidence regarding the supply of *brown tablets.* Accordingly, the Committee declines to make a finding regarding the provision of *brown tablets* by Dr Sheth to Patient A.

61. The Particulars 1.b. and 1.c. of Complaint Two are not proven.

Complaint Two Particular 2.

62. The HCCC alleged that *the practitioner contravened clause 7 and Schedule 2, clause 1 of the Regulations in relation to a consultation with Patient B on 6 August 2014 in that he failed to record:*
    a. medical history;
    b. details of any examination conducted;
    c. the reason for the consultation.

63. The Committee noted that the record subject of Complaint Two Particular 2. indicated a consultation at 5:45 pm on 6 August 2014. Dr Sheth said that Patient B, a staff member, put her head in the door, gave him a form from her specialist, and requested he refer her for pathology services, (a blood test) because her usual doctor was not present on that day. She had been receiving chemotherapy treatment, written up by Dr Sheth in the medical record as (*neutropenia noted last result, post chemo*), and the test, (*FBC and diff*), was a follow-up. The documents before us did not provide the whole file which Dr Sheth would have been able to access.

64. Dr Sheth told us that it was 5:45 pm, shortly before he left the practice at the end of the day. He said that he did not bill Patient B.

65. Dr Howle opined that the record Dr Sheth made was adequate in the circumstances. He noted that Patient B had a regular general practitioner, and two specialists, noting that in a group practice, if the usual doctor was not available, then what occurred in regard to Patient B's documentation for a blood test was appropriate. He noted the test results should then be available for review by the regular practitioner.

66. We are satisfied that taken in isolation the record may not have been complete in that it did not record medical history in detail, or a referring doctor. However, given that it was a follow-up (post chemo was recorded), and that Dr Sheth had access to Patient B's complete file, we are satisfied that the record was adequate, and that the Particular is not proven.

REFEREES

67. The Committee had before it two references for Dr Sheth. The principal of the Broken Hill GP Super Clinic, Dr Funmilola Komolafe, and the practice manager, Natasha Nadge, both praised Dr Sheth in terms of his abilities, his commitment to his patients, and the assistance he has given to new and younger doctors.

68. Dr Sheth told us that Dr Komolafe acted as an informal mentor for him, that she saw some of his patients, and that he had consulted her twice in that regard, over the past year.

69. As can be seen from the discussion above, and consideration of the Particulars of Complaint, Dr Sheth's abilities and commitment to patients were not in question before the Committee.

DOCUMENTS

70. The Committee had before it a folder of documents lodged by the HCCC, a letter dated 28 July 2017 from Dr Sheth's solicitors, tendered by the HCCC, and a number of documents lodged by Dr Sheth which it took into evidence.

THE COMMITTEE'S FINDINGS IN RELATION TO THE COMPLAINTS

71. The Committee, having heard the evidence, including that of Dr Howle, and submissions, and taking into account the legislation, was satisfied that Complaint One Particular 1 was proven.

72. As indicated in the paragraphs above, we did not find any other other Particulars of Complaint proven. Accordingly there are no issues of concern to the Committee with regard to documentation and record keeping, and no breach of section 139B(1)(b) and the Regulations.

73. We are satisfied that the conduct as alleged in Complaint One Particular 1 constitutes unsatisfactory professional conduct under section 139B of the *National Law* in that Dr Sheth has engaged in conduct that demonstrates the knowledge, skill or judgment possessed, or care exercised, by him in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

74. In coming to a decision regarding appropriate outcomes, the Committee takes into account the fact it is well established that the jurisdiction exercised by the Professional Standards Committee is protective, not punitive. The reach of the concept of protection of the public has recently been set out by the NSW Court of Appeal in *HCCC v Do [2014] NSWCA 307*, where the Court made clear that a broad understanding of protection was appropriate.

75. We have also noted that on 18 March 2017 Dr Sheth completed a one day course provided by MDA *National Practical Solutions to Patient Boundaries* which he told us he found of assistance.

76. The Committee is mindful also that whilst in 2013 Dr Sheth was single; he is now married with a young child. That may assist to stabilise his life and social activities.

77. We are also mindful that whilst the primary role of the Inquiry is protective, it also has a role in maintaining public confidence in the profession, and maintaining the reputation of the profession. Orders of the Committee may operate to have a general deterrent effect for other members of the

profession. (*Prakash v Health Care Complaints Commission* [*2006] NSWCA 153*)

ORDERS

78. Accordingly, the Committee orders that pursuant to section 146B(1)(a) of the *National Law*, Dr Sheth be reprimanded.

SUBMISSIONS REGARDING CONDITIONS

79. The Committee then considered the submissions of the parties with regard to conditions to be imposed on Dr Sheth's practice of medicine. The power arises pursuant to section 146B of the *National Law*.

80. The HCCC submitted that an audit of Dr Sheth's medical records would be appropriate, while Ms Sant submitted on behalf of Dr Sheth that there were no issues in regard to his records, apart from the *pathology issue.*

81. The Committee did not find any of the Particulars of Complaint in regard to medical records proven. Accordingly we did not consider that an audit of Dr Sheth's medical records was warranted.

82. The Committee also considered the appointment of a mentor for Dr Sheth as submitted by the HCCC. Ms Sant's submission was that Dr Sheth already had a mentor in Dr Konolake. Further that he was in a different position from that which prevailed in 2013, and is currently neither emotionally nor professionally isolated. We are mindful of the submissions that Dr Sheth is now married with a child, and unlikely to further breach boundaries. However, we considered that a mentor who was external to the practice was desirable in the circumstances, and imposed the following Conditions.

CONDITIONS

83. The Committee accordingly imposes the following Conditions in regard to Dr Sheth's practice of medicine, requiring him:

    1. Within three months of, the date of publication of these Reasons for Decision, 17 August 2017, Dr Sheth is to nominate a registered experienced general practitioner to act as his professional mentor for approval by the Medical Council of NSW, in accordance with the Medical

Council of NSW's Compliance Policy – Mentoring (as varied from time to time), and as subsequently determined by the appropriate review body;

2. The mentor must not practise at the same location, practice or premises as the practitioner. The mentoring sessions may be conducted in person or remotely.

3. Dr Sheth is to authorise the Medical Council of NSW to provide the approved mentor with a copy of the report of the proceedings that imposed this Condition;

4. Dr Sheth is to meet with his approved mentor no less than once a month.

5. At each meeting, whether conducted in person or remotely, the practitioner and the mentor are to include discussion of professional boundaries, and any other issues of concern to either party which may arise from time to time. Dr Sheth and the mentor's discussions should include reference to the *'Medical Board of Australia, Good Medical Practice: A Code of Conduct for Doctors in Australia'*.

6. Dr Sheth is to authorise the mentor to inform the Council (in an approved reporting format, three monthly), that these meetings have occurred;

7. Dr Sheth is to authorise the mentor to inform the Council immediately if the mentoring relationship ends, or of any concerns regarding the performance of the practitioner, his professional conduct or well being.

8. Dr Sheth is to immediately nominate a proposed replacement mentor to be approved by the Council if the approved mentorship arrangement ends or is suspended.

9. Dr Sheth is to be mentored for a minimum of 12 months, and as subsequently determined by the Council.

10. Dr Sheth is to meet the costs of compliance with the conditions.

APPEAL AND REVIEW RIGHTS

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

85. An appeal must be lodged with the Tribunal within 28 days of receipt of these written Reasons for Decision.

86. Dr Sheth also has the right to seek a review by the Medical Council of NSW of the Committee's Order to impose Conditions. The Medical Council is the appropriate review body for the purposes of Part 8, Division 8 of the Health Practitioner Regulation *National Law* (NSW).

87. Sections 125 to 127 of the *National Law* are to apply whilst the practitioner'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 Board of Australia.

NON-PUBLICATION ORDER

88. The non-publication order made on 22 June 2017 in respect of Patient A and Patient B continues, so that the names and addresses, and any identifying features of those persons may not be published.

DISTRIBUTION OF DECISION

89. A copy of the Reasons for Decision is to be provided to Dr Nirmit Milan Sheth and his legal advisors, the HCCC, the National Board, the NSW Medical Council, and Patient A and Patient B.

Ms G Ettinger
Chairperson

17 August 2017