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 Richard Grant Wood

Dates of Inquiry:	29 & 30 August and 15 December 2017
Committee members:	Mr Mark Paul, Chairperson Dr Robyn McCarthy Dr Esther Kok Mr Christopher Gardiner
Appearance for Health Care Complaints Commission:	Ms Emma Bayley, Legal Officer
Appearance for Dr Richard Grant Wood:	Mr Tim Saunders of Counsel, instructed by Ms Nevena Brown from Meridian
Date of decision:	18 January 2018
Decision	The Committee made no finding of unsatisfactory professional conduct
Non-publication direction:	Refer to paragraph 5 of this decision for details of a non-publication direction

Introduction

1. We are concerned with the relationship between Dr Richard Wood and one of his patients, a retired World War 2 RAAF pilot, now deceased, a proud man generous to all those he knew. He gave Dr Wood gifts of wine for special occasions, as thanks for particular assistance, and at other times, and he gave him a $200 meal voucher (to share with his wife). On one occasion he offered him some money, which Dr Wood says he refused.

2. His daughter and granddaughter believed Dr Wood had failed to observe appropriate professional boundaries. As his appointed enduring guardian, the granddaughter also thought that Dr Wood did not keep her properly informed of her grandfather's medical management, that Dr Wood undertook a further assessment of her grandfather's cognitive abilities when there was no basis to do so, and that he later incorrectly diagnosed her grandfather as cognitively competent. She raised her concerns with the Health Care Complaints Commission, and the Commission brought this Complaint of unsatisfactory professional conduct.

3. Most, but not all of the facts of the particulars of the Complaint were admitted by Dr Wood. Our task is to decide whether Dr Wood's conduct, undisputed or as found by us, was significantly below the reasonable standard expected or was otherwise improper or unethical.

4. After considering the evidence and the meaning of unsatisfactory professional conduct we have concluded that the Complaint has not been proved, and accordingly we make no finding of unsatisfactory professional conduct by Dr Wood.

Non-publication direction

5. On 26 June 2017 the chairperson of this Professional Standards Committee made a direction that there be no publication of any information that would identify Dr Wood's patient. The direction was made on behalf of the family, and because the particular identity of the patient is not relevant to the determination of the Complaint. That direction continues. It was apparent from the evidence that Dr Wood's patient took pride in his war service. We describe him as the Ex-serviceman, rather than use the impersonal nomenclature of 'the Patient'.

The Complaint

6. The Complaint of unsatisfactory professional conduct (as amended, **Exhibit 7**) has four components:

> *First,* that Dr Wood failed to observe appropriate professional boundaries in accepting gifts of bottles of wine on a number of occasions and on a regular basis, receiving a gift voucher for a meal worth $200, and on or about 25 July 2014 accepting $1,000 in cash;
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> *Second*, Dr Wood failed between 12 September and 9 December 2013 to appropriately engage with the Ex-serviceman's enduring guardian concerning his medical management by not informing her of the Ex-serviceman's request for a further assessment of his cognitive abilities after an earlier assessment by a psychiatrist (Dr Subau), and that Dr Wood arranged for that further assessment by a geriatric specialist practitioner (Dr Delohery);
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> *Third*, in October 2013 Dr Wood arranged that further assessment without appropriate medical or therapeutic purpose, in that there was no need for a further assessment so soon after the previous assessment, and that the psychiatrist was not contacted to discuss the matter; and
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> *Fourth*, On 17 December 2013 Dr Wood failed to make an appropriate diagnosis of the Ex-serviceman as being cognitively competent, including for the purpose of driving, in concluding the Ex-serviceman had been suffering from temporary delirium and not dementia at the time of the earlier assessment by the psychiatrist.

7. Although raised as four distinct matters, the underlying thread of how Dr Wood managed the doctor-patient relationship is what connects them.

8. The Commission submitted that the first component of the Complaint amounted to unsatisfactory professional conduct as defined by section 139B(1)(l) of the *Health Practitioner Regulation National Law* (National Law), being 'other improper or unethical conduct', and that the other components amounted to unsatisfactory professional conduct under section 139B(1)(a) of the National Law, in that the conduct fell significantly below the standard reasonably expected.

9. Dr Wood denied any unsatisfactory professional conduct though he acknowledged infrequent bottles of wine from the patient on occasions such as Christmas and his

birthday, and sometimes more frequently. He denied that he accepted bottles of wine on a regular basis. He acknowledged receipt of the $200 voucher but said it was to him and his wife, also a general practitioner, for both of their professional assistance to the patient and his wife. Although he agreed the Ex-serviceman once offered him money, he denied having accepted it. A Veteran's Gold Card covered all medical expenses, and the patient was never charged for any attendance.

10. With respect to the second aspect of the Complaint Dr Wood admitted that he had not spoken to the granddaughter, saying he had no obligation to do so as in his assessment the patient had full capacity and was capable of managing his own affairs.

11. With respect to the third aspect of the Complaint Dr Wood said there was a proper basis to obtain a report from a specialist other than the one previously received from another specialist. Dr Wood's response in this regard overlaps with his response to the fourth aspect of the Complaint in that he says he had a proper basis for concluding that the first assessment by a specialist was flawed and that a review was appropriate and reasonable, given the request by the Ex-serviceman.

Our inquiry

12. We undertook our inquiry on 29 and 30 August 2017, and 15 December 2017. During the course of the hearing the Commission amended the Complaint by the deletion of some parts of the original Complaint and the provision of more specific particulars. In doing so the Commission simplified the course of the proceedings and our task.

13. Ms Emma Bailey, solicitor, represented the Commission, and Mr Tim Saunders instructed by Ms Nevena Brown of Miridian Lawyers, represented Dr Wood. We thank them for their efficiency and professionalism in assisting us to deal only with those matters in contention.

14. In undertaking our inquiry we applied the civil standard and make our findings on the balance of probability. The factual issues for our consideration were:

    (a) What was the frequency and volume of gifts of wine accepted by Dr Wood over the years?

    (b) What were the circumstances of the receipt of the gift of the $200 voucher for a meal?

    (c) Did Dr Wood accept a gift of $1,000 from the patient?

(d) Did Dr Wood improperly fail to engage with the Ex-serviceman's granddaughter (his appointed enduring guardian) concerning his medical management in making a referral to Dr Delohery for assessment of the patient's capacity given he had recently received a report from Dr Subau on that topic?

(e) Was there a medical basis in seeking the opinion from Dr Delohery?

(f) Did Dr Wood have a basis for concluding in December 2013 that the Ex-serviceman was cognitively competent, including for the purpose of driving a motor vehicle, in that he incorrectly concluded in October 2013 that the Ex-serviceman was suffering a temporary delirium and not dementia?

The evidence

15. Dr Wood practised as a general practitioner in partnership with his wife, and she was the general practitioner for the Ex-serviceman's wife. The Ex-serviceman was a patient of Dr Wood for a decade or so and ceased to see Dr Wood from about July 2014. The patient died about a year later, in circumstances having no connection with Dr Wood or our inquiry.

16. The Commission provided two folders of material (**Exhibit 1**) containing documents relating to the Complaint, a long statement from the granddaughter with various annexures, statements from the Ex-serviceman's family and friends and from Dr Wood's staff, information from other practitioners consulted by the Ex-serviceman, papers relating to the granddaughter's enduring guardianship and power of attorney, financial statements, a report from Dr Emery Kertesz as an expert, materials from Dr Wood in response to the Commission's investigation and the relevant medical records. Importantly, the Commission provided the current and previous version of *Good Medical Practice: A Code of Conduct for Doctors in Australia*.

17. The Commission also provided a supplementary statement of the granddaughter dated 27 August 2017 attaching documents, and some text messages between her and the Ex-serviceman's daughter, her mother. Included were colour copies of the Ex-serviceman's handwritten diaries through to 2013 and 2014, the most significant period of our inquiry (**Exhibit 2**).

18. Dr Kertesz was provided with further information by letter of 11 August 2017 (**Exhibit 3**) and he prepared an updated assessment and opinion (**Exhibit 4**).

19. Ms Bailey helpfully provided a chronology of essential dates, agreed by Mr Saunders (**Exhibit 5**). During the course of the hearing the referral documents from Dr Wood to Dr Delohery became available and were provided to us (**Exhibit 6**). The Commission prepared a schedule of attendances for 2012 to 2014 (**Exhibit 8)**.

20. In large part Dr Wood relied upon the responses he had made to the Commission during the course of its investigation and his formal reply to the Complaint (**Exhibit E** replacing **Exhibit A**) He also provided a statement form the close friend of the Ex-serviceman (**Exhibit B**), a further statement from a receptionist of the practice (**Exhibit C**). We were also provided with a schedule from the local pharmacy listing the prescriptions issued to the patient during 2013 (**Exhibit D**).

21. On 29 and 30 August 2017 we heard evidence from the daughter, the granddaughter, the expert Dr Kertesz, the close friend of the Ex-serviceman, and one of the practice's receptionists. Dr Wood gave evidence on 15 December 2017.

22. In accordance with usual practice the parties were ready to make oral submissions on 15 December, and we heard from Ms Bayley for the Commission. The hearing was cut short and unfortunately Mr Saunders was unable to make oral submissions. By agreement Ms Bayley handed up her notes by way of written submissions, and Mr Saunders responded in writing on 22 December 2017. The Commission did not see the need to respond.

23. We wish to thank Ms Bayley and Mr Saunders for their assistance throughout, in particular for amending and refining the Complaint and the Reply as the evidence unfolded and further documents became available.

24. We now deal with the factual matters in dispute and the allegation of unsatisfactory professional conduct. In determining the factual matters we have applied the civil standard and being careful in reaching conclusions.

The gifts of wine

25. Dr Wood acknowledges receiving gifts of wine. It was uncontroversial that, in general, patients give gifts to their doctors, often bottles of wine or spirits. On the evidence before us medical practitioners invariably accept these gifts. It was not argued that accepting a gift is necessarily unsatisfactory professional conduct. The Complaint is that in the circumstances Dr Wood accepted too much and too often.

26. Although there was a great deal of evidence on the point, ultimately there is little difference between what Dr Wood says was the frequency and amount of wine given to him, and the evidence provided by the Commission. The daughter and granddaughter believed it was a lot of wine on many occasions. However their evidence of what they had seen pass between the Ex-serviceman and Dr Wood was more limited – and not markedly different from Dr Wood's description. It is clear he was giving gifts of wine to many people, to those who provided services and to his friends. The evidence is he gave gifts of wine to at least four of his other medical practitioners and to his physiotherapist. The number and spread of these gifts would explain the belief of the daughter and granddaughter that there were frequent gifts. There is evidence of a gift being made during a home visit. Dr Wood has no recollection of taking the wine away, but does not deny the possibility. Perhaps the Ex-serviceman said the wine was for him, and delivered it later; we are unable to determine. However, we conclude that the frequency and amount of the gifts is of the order as Dr Wood has admitted. Even if it were somewhat more our ultimate conclusion would be the same.

27. Dr Wood did not say that he ever refused the gifts of wine - he accepted them all. One of the receptionists working two days a week stated that there were gifts at Christmas time and at the time of Dr Wood's birthday. She remembers Christmas as being an event when gifts were given and recalls the gifts of wine for Dr Wood's birthday because hers is the same date. But she also concedes that there may have been gifts of wine on other occasions – she is not confident either way.

28. The other receptionist stated that she observed the patient coming to the practice with gifts of wine for Dr Wood at Christmas and for occasions like a birthday. A friend said he was aware that the Ex-serviceman was giving gifts of wine to Dr Wood and on one occasion he accompanied him to the surgery when a gift was delivered. The patient's daughter said that on those occasions when she was staying with her parents she often saw him preparing wine to give as a gift and that on at least two occasions she attended when the delivery was made. The Ex-serviceman made notes of some of his gifts, but it is not clear if the notes are confirmation of an actual gift or a statement of intention.

29. Over the years the frequency was increasing from only at Christmas and mid-year birthday time to a few more times each year. The Ex-serviceman saw Dr Wood about fortnightly. There is no evidence that he gave gifts on every visit or in a predictable pattern of giving, and we conclude it was more likely about every two or three months.

The gifts were for Dr Wood and also for his wife, Dr Suzanne Wood, who was the general practitioner for the Ex-serviceman's wife. The evidence before us was that the bottles of wine were comparatively inexpensive. The Ex-serviceman knew Dr Wood liked red wine and his wife white wine, and gave bottles of both on most occasions.

30. Taking all of this evidence together and on the basis that those who gave evidence were doing their best to recall things as well as they could we have concluded that gifts of wine for Dr Wood, usually of two bottles but sometimes more, were accepted by Dr Wood at Christmas time, at around his birthday and on other occasions, perhaps three or four times in total a year. The frequency and volume may have been somewhat more, but not significantly so.

The circumstances of the gift voucher

31. Sometime between 17 May 2013 and 31 July 2013 the Ex-serviceman took or delivered to the surgery a $200 gift voucher for Dr Wood and his wife to enjoy a meal at a local restaurant. In a covering note the Ex-serviceman refers to how his wife's health has been progressing and that he had recently received an unconditional driver's licence, of which he was very proud. Dr Wood admits he received the gift, and says he believed the gift was given mainly in recognition of Dr Suzanne Wood's efforts on behalf of the Ex-serviceman's wife. Although the Ex-serviceman referred to his unrestricted drivers licence there is no allegation, nor any evidence, that Dr Wood did anything other than what was appropriate in relation to the licence renewal.

Did Dr Wood accept a gift of $1,000?

32. As this part of the Complaint came to us the only issue was whether Dr Wood had accepted a gift of $1,000. There was evidence, which we accept, that the Ex-serviceman prepared a gift by placing $1,000 in a standard business size envelope addressed to Dr Wood a few days before visiting Dr Wood on 25 July 2014.

33. The daughter was aware that her father had prepared the gift and she wanted to find out if Dr Wood would take the money. She contacted her daughter and they decided she should take a photograph of the money in the envelope, and she did so. She went with her father to Dr Wood's surgery. When her father was consulting Dr Wood she waited outside in the reception area. She gave evidence that when her father left her to see Dr Wood the envelope was in one of his buttoned shirt pockets. She said that when he came out of the room the pocket was unbuttoned and the envelope was

not there. When she asked him if Dr Wood had taken the money he said, “Yes, and he thanked me profusely!” She said she tried to check his other pockets but could not find the envelope. Although she was concerned about Dr Wood accepting a gift of money she did not raise the matter at that time or later. She did, however, make a note in her father’s diary.

34. When answering questions the daughter was not always clear in her evidence and had some trouble putting events in order, even when speaking about aspects of her own statements and the various text messages she had sent to her daughter. Although we accept she was doing her best to assist, we consider that she likely approached the events of 25 July 2014 in the belief that the envelope would be handed over, and as a consequence she viewed what happened at the time and has since recalled in that light.

35. Dr Wood recalled an occasion when the Ex-serviceman went to hand him an envelope, saying, “This is for you”. Dr Wood thought the envelope looked like it contained a ‘wad’ of money. Dr Wood says he refused to accept the envelope and said, “There’s no need for that”. He described the envelope as being of the same kind as appeared in the photograph taken by the daughter. He did not make a note of what happened, as he said didn’t think much about the incident at the time.

36. We conclude that the circumstances described by the daughter and Dr Wood are the one and the same event.

37. A month later Dr Wood was on leave, and the Ex-serviceman consulted the locum, Dr Evans (now deceased). The Ex-serviceman offered an envelope of money to Dr Evans, which he refused. According to a statement from Dr Evans the daughter had said, “Dr Wood always takes it”. However, the daughter said it was her father who had made the comment. If the Ex-serviceman had made the statement, we would not necessarily conclude the statement as confirmation that Dr Wood had accepted the gift.

38. There was evidence that the Ex-serviceman had made his way in life by being generous, and that he prided himself on being able to get the best service by giving gifts. From what we learned from the evidence he was a man intent on being in charge of his life, even at his late age. He did not want his daughter, or granddaughter, or even his wife, telling him how he should deal with his money or his affairs.

39. A refusal by Dr Wood to accept the gift, especially after having accepted the gifts of wine, may have been a blow to his view of himself. The Ex-serviceman may have wanted to keep from his daughter that Dr Wood had not accepted the money. So when asked by his daughter about the gift he said Dr Wood had accepted the money. Dr Wood did not see what the Ex-serviceman did with the envelope but it did not go back into the button pocket. Whilst the daughter made an effort to search his pockets that she could not locate the envelope does not mean Dr Wood received it. On the available evidence the Ex-serviceman was not the type to allow his daughter to undertake a thorough search of his clothes.

40. Taking this all into account we conclude that although the envelope of money was offered, it was refused by Dr Wood. We reach this conclusion even though there is not sufficient evidence to reach any conclusion about what happened to the envelope. We find that Dr Wood did not accept a gift of money as alleged in he Complaint.

Do the gifts of wine and the voucher amount to too much, too often?

41. The Complaint is made that the conduct in accepting the gifts of wine and the voucher amount to improper or unethical conduct as referred to in section 139B(1)(l) of the National Law. Those words are not defined in the National Law and are to be given their ordinary meaning within the context of the statute. One of the objectives of the National Law, section 3(2), is:

> *To provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered.*

And we approach our consideration in that context.

42. The relevant conduct is conduct that relates to the practice of medicine. The gifts were given as a patient to a doctor in recognition of the service provided by the doctor. The receiving of the gifts related to the practice of medicine.

43. How might the receipt of gifts be improper or unethical? It was conceded by the Commission and for Dr Wood (although we have not needed to determine) that the receipt of the money would amount to unsatisfactory professional conduct. The Commission says that the gifts of wine and the voucher were too much, too often, a position that acknowledges that some level of gift giving would not transgress the National Law. That position also implies that there is something about receiving gifts that would be improper or unethical. Dr Wood did not argue that receiving gifts could

never be improper or unethical, but rather that the level of his receipt of gifts was not of that level.

44. The difficulty is identifying when the receiving of gifts becomes improper or unethical. What is unethical may be measured by what the medical profession regards as the standard of behaviour expected of those within the profession. *Good Medial Practice* (**Exhibit 1, Tab 86**) is a source of those expected standards, though it only deals briefly with the issue. Paragraph 3.2.5 recognises the power imbalance in the relationship and warns against exploitation. That warning is echoed in paragraph 8.2.2 with a further reference to exploitation. Paragraph 8.12 concerns financial and commercial dealings with patients, a topic that can encompass gifts. The provisions do not address the issue directly, except to prescribe encouraging patients to give gifts that have a direct or indirect benefit, but without more guidance.

45. Most gifts will have some benefit, so the warning is essentially one of 'not encouraging'. That ethical requirement (at least based on the material provided to us) is one understood from the perspective of the practitioner – the assessment is whether there is encouragement by the practitioner. If there was no encouragement then the receipt of the gift would not, absent other factors, breach the principles set out in *Good Medical Practice*. The ethical standard expressed in *Good Medical Practice* does not appear to require an assessment by the practitioner of how the patient sees the issue of the giving of the gift affect the relationship.

46. Why does the patient give the gift? It may be a simple one-off thank you, or that gift giving is a habit or custom of the patient. It may be with the intent of creating some obligation in the practitioner. It may be something done almost without thought, and routinely. It may be done because the patient thought it was expected. Perhaps once a gift is given it is difficult not to give a gift on the next occasion. Does the patient feel exploited? Does the patient feel obliged to give to ensure good service? Is there a burdensome cost? What effort was involved?

47. It seems to us that the question of whether the conduct is unethical cannot be assessed by a practitioner without the practitioner interrogating the issue – by self-reflection, by discussion with peers, and most importantly by talking to the patient and underscoring that medical treatment will be just as good whether gifts are given or not. How this might be done could well vary from practice to practice, and patient to patient.

48. The delivery of a flamboyant gift to a surgery may unsettle those waiting, especially if they do not have a gift. An inexpensive bottle of wine might be too expensive for some. A tin of homemade biscuits may have kept the patient baking late the night before. On the other hand the giving of a gift may well be of benefit to the patient and the relationship – a chance to say thank-you and bring a significant health event to a conclusion. What is said when the gift is given will be relevant.

49. The receipt of gift by a practitioner without the practitioner reflecting on how the gift might affect the doctor-patient relationship could well amount to unethical conduct. In our view it is not enough for a practitioner to simply conclude that the gift was not encouraged.

50. Similar considerations apply to what might be considered improper conduct. It would be improper if the gift giving and receiving were to harm or somehow influence the doctor-patient relationship. What is important is whether the practitioner has given consideration to how it is that the giving and receiving of gifts affects the patient and the relationship. It is not enough for practitioners to simply satisfy themselves that a gift was not encouraged.

51. In considering this question we were assisted by the submissions of the Commission in identifying various aspects of the giving of gifts that might assist in the analysis of whether the receiving of gifts was unethical or improper: monetary value; was it given during current treatment; the nature of the gift; the frequency; over what period of time; novelty of the gift; a personal or generic gift; does the gift reflect a preference of the practitioner; is the gift given directly or impersonally; in what context; is there another relationship; motivation for the gift; is the gift open or secret; motivation in the giving; any vulnerability of the patient; disclosure by the practitioner of information that 'fashions' the gift; is continued acceptance encouragement; any steps to discourage giving; and attempts to return the gift. The list is not exhaustive.

52. Dr Wood said he has received gifts from other patients and that the Ex-serviceman gave more than most. Dr Wood knew that he was a man who liked giving gifts, and took the approach that it was his way of dealing with the world. Though the Ex-serviceman knew Dr Wood's fees were paid through his Veterans Gold Card, he wanted to do more to show his thanks. There was no evidence of encouragement of the gifts, except as may have been implied through the acceptance of the gifts. It would have been desirable for Dr Wood to have been active in responding to the gifts from the Ex-serviceman, such as by having an explicit conversation about why the

gifts were given and reinforcing that there was no need for them. After all the gifts were not infrequent or received for on isolated events, and there was evidence that the frequency and volume were increasing. Dr Wood could have considered making notes of when the gifts were received, so as to gain perspective on what the Ex-serviceman was doing. Had he done so, any change in frequency would have been obvious, and might have prompted Dr Wood to consider whether there was some change in his patient's behaviour. That it may have been preferable for Dr Wood to deal with the issue in another way, not doing so cannot be described as improper or unethical, particularly in the context of their relationship and the desire of the Ex-serviceman, and perhaps his need, to keep giving gifts.

53. Gifts from the Ex-serviceman and others were often left at the reception desk. When giving evidence Dr Wood referred to his practice of requiring that the patient be asked to remain so at the next convenient moment the practitioner could speak personally, acknowledge the gift, thank them, and say the gift is not expected. The evidence from Dr Wood is that Ex-serviceman gave the gifts of wine directly to him. Nevertheless that Dr Wood has some system for dealing with gifts supports our conclusion that Dr Wood behaved in a similar way to the Ex-serviceman.

54. Another factor is the evidence of the Ex-serviceman's friends. From their statements and the evidence of one, it is apparent that the Ex-serviceman enjoyed giving gifts and it was part of his character. He never complained of having to give gifts, and indeed asked his friends to help him deliver the gifts. On the evidence before us there was no exploitation by Dr Wood of the relationship. The gift-giving was driven by the Ex-serviceman himself. The gifts were of minimal value. The refusal of the gift of money would have been an opportune time to have a more thorough conversation about gift-giving, but the failure to do so, in context, does not amount to unsatisfactory professional conduct.

Did Dr Wood improperly fail to engage with the Ex-serviceman's granddaughter as enduring guardian between 12 September 2013 and 9 December 2013

55. Dr Wood was aware that the granddaughter had been appointed enduring guardian, as she had written to Dr Wood on 5 August 2013 and told him so in the course of raising some concerns about her grandparents (**Exhibit 1, Tab 9**). The appointment was dated 10 November 2009. It was in the usual form providing that it would operate if, because of a disability, the Ex-serviceman were partially or totally incapable of managing himself (**Exhibit 1, Tab 64**).

56. The Complaint is not based on an allegation that the Ex-serviceman had become partially or totally incapable such that the enduring guardianship had become operative as a matter of law, but rather relates to the surrounding circumstances – in short that the granddaughter had real concerns and was acutely interested in medical matters to do with her grandfather. The Complaint is that Dr Wood should have informed her of the Ex-serviceman's request for a further assessment of his cognitive abilities after Dr Subau's assessment of 12 September 2013, and that Dr Wood was proposing to refer him to a geriatric specialist practitioner after the earlier assessment by a psychiatrist.

57. Even if we were to accept the genuineness of the concerns and interest, we do not see how the conduct of Dr Wood in not consulting with the enduring guardian as to those matters could amount to unsatisfactory professional conduct within the meaning of section 139B of the National Law.

58. Indeed were Dr Wood to have spoken to the granddaughter he would have breached the confidentiality of the relationship. It hardly needs to be stated, but it is certainly clear from *Good Medical Practice* that to do so would have been a breach of standards, and most likely amount to unsatisfactory professional conduct.

59. Dr Wood gave evidence that he was of the view that the Ex-serviceman was fully capable of managing his medical affairs, and there is no evidence to the contrary. It is not to the point that the granddaughter may have had a genuine interest in knowing what was happening, even if she was not involving herself in his health decisions by accompanying him when he saw Dr Wood. If the Ex-serviceman chose not to tell her, then there was no legal obligation or any other requirement on Dr Wood to tell her.

60. That being so we make no adverse finding on this aspect of the Complaint.

Was there a medical basis in seeking the opinion from Dr Delohery

61. It was about 16 October 2013 (the precise date is not material) that Dr Wood referred the Ex-serviceman to Dr Delohery for a 'Cognitive Assessment ' (**Exhibit 6**), in particular for testamentary capacity and mental ability to drive a car.

62. The Complaint is that Dr Wood did so without appropriate medical or therapeutic purpose in that there was no sufficient clinical indication for the assessment so soon after the earlier assessment by Dr Subau of 12 September 2013 and without first contacting Dr Subau to discuss the matter.

63. An immediate response to this aspect of the Complaint as particularised is that we see no general basis upon which Dr Wood was somehow obliged to inform Dr Subau before making a referral to another practitioner, even if for the same assessment as had recently been made by Dr Subau. Further, we do not accept the limitation of '*sufficient* clinical indication' before a new referral could be made, at least if that phrase is intended as a qualification on the making of a referral in the interests of the patient.

64. In any event, the evidence shows that Dr Wood had ample basis to make the referral.

65. Dr Suzanne Wood made the referral to Dr Subau at the request of the family when she was making a home visit. She did not have the same knowledge of the Ex-serviceman as did Dr Wood. Her referral was brief and did not include a history of recent medications or that the Ex-serviceman had been involved in a car accident a few months before. Dr Subau concluded the Ex-serviceman was suffering early dementia of a mixed Alzheimer/vascular type, with recent deterioration and that he was now unable to manage his financial affairs. The Ex-serviceman came to see Dr Wood and requested a second opinion. Dr Wood saw from the report that Dr Subau did not have a full history, and was not aware of recent medications or the motor vehicle accident. Dr Wood thought the Ex-serviceman, at the time of seeing Dr Subau, might have been suffering from delirium from the effects of medication following the car accident. Dr Wood was of the view that when he saw the Ex-serviceman he was then capable and much better than he had been a month or so before. The Ex-serviceman attended with a close friend who told Dr Wood that the Ex-serviceman was still affected by medication when he saw Dr Subau but was now much better and had returned to his old self. Indeed it was at the urging of his friends who noticed an improvement in his condition that prompted the Ex-serviceman to see Dr Wood for a reassessment. Also the Ex-serviceman was insisting on a second opinion as he was now restricted in driving his car and could not sign cheques.

66. We do not conclude that the mere request by a patient for a second opinion is sufficient basis for a referral, but the fact that a patient is making that request can be a reason for a referral in the context of acting in the patient's interests. As identified above Dr Wood had a number of other reasons for the making the referral, particularly as he thought Dr Subau's report was a limited point in time assessment and was at odds with Dr Wood's assessment of the Ex-serviceman made over many years. Dr Wood chose a geriatric specialist rather than a psychiatrist, because of his view that what was required was a broader assessment than had been undertaken by

Dr Subau. Dr Wood provided a brief history with reference to the motor vehicle accident and included a schedule of recent medications. There was a sound medical basis to make the referral.

67. The information provided with the referral was perhaps not as detailed as it could have been; in particular Dr Wood did not inform Dr Delohery about Dr Subau's report. Even allowing for the Ex-serviceman's objection to Dr Subau, it was open to Dr Wood to have spoken to Dr Subau as part of his consideration in making the referral to Dr Delohery. But we do not say that was necessary. The failure to do so was not a departure from the expected standard. Overall there is nothing in Dr Wood's practice that could be said to be unsatisfactory professional conduct.

68. This aspect of the Complaint is not made out.

Did Dr Wood have a basis for concluding in December 2013 that the Ex-serviceman was cognitively competent?

69. In some aspects this part of the Complaint is related to the part above, as they both concern Dr Wood's assessment that in September 2013 the Ex-serviceman was most likely suffering a temporary delirium from the medication for the motor vehicle accident and not dementia. When Dr Wood received the report from Dr Delohery along with some other assessments he concluded that the Ex-serviceman was capable and able to drive. It is this assessment that is challenged.

70. There was evidence about whether in September the Ex-serviceman was still taking medication for pain from the accident, and if not, whether he could nevertheless still be suffering the effects some time later. Dr Kertesz was of the view that the effects of the medication could not have lasted that long and that dementia was the preferred conclusion. He initial assessment was that the diagnosis was 'inappropriate and medically incorrect', but was less critical in response to our questions.

71. During the hearing further information came to hand about what pain medication was prescribed or supplied to the Ex-serviceman and the circumstances in which he may have used it.

72. Dr Wood argued for and explained his different assessment. He did so by reference to his knowledge of how the medication would have affected the Ex-serviceman and for how long. It is clear that he was thoughtful and considered in his assessment, and displayed knowledge of the relevant issues. He also refers to Dr Delohery's assessment of 9 December 2013 that the Ex-serviceman had 'appropriate capacity'.

There was nothing in Dr Delohery's reports to suggest that Dr Wood should reject it, put aside his own assessment and instead rely only on Dr Subau's report.

73. It is not necessary that we resolve the particular issue of whether the Ex-serviceman may have been suffering from a temporary delirium at the time he saw Dr Subau. It is enough that we conclude that the diagnosis was open to Dr Wood, and may well have been correct. We do not conclude that Dr Wood's practice was significantly below the standard reasonably expected.

74. In conclusion, we have not found the Complaint proved, and accordingly there is no basis, nor need, to exercise any of the powers contained in Subdivision 3, Division 3 of Part 8 of the National Law.

Distribution of decision

75. We provide a copy of our decision to Dr Wood, the Commission, the National Board and the complainant.

Appeal

76. Subdivision 1, Division 6, Part 8 of the *National Law* deals with appeals in respect of this decision.

Mark Paul
Chairperson