

2. That paragraph (iv) be affirmed, such disqualification to commence on 1 October 1996.

Further it is directed that the Direction made by this Tribunal on 9 July 1996 that the name of the Applicant be suppressed, be discharged forthwith.

(Signed) The Hon Mrs M Lusink
President

REASONS FOR DETERMINATION

The Hon Mrs Margaret Lusink, President:

Introduction

1. This hearing came before the Professional Services Review Tribunal on 9 and 25 July 1996 in Sydney by way of a Request for Review of a Final Determination made by the Determining Officer appointed under the Health Insurance Act 1973 as amended. The Determination was dated 18 October 1995 and the Request for Review was contained in a letter from the Applicant's solicitors to the Minister for Human Services and Health, dated 7 November 1995.

2. The Final Determination reads:

- "(i) *in accordance with paragraph 106U(1)(b) of the Act, Dr Yung be counselled by the Director of Professional Services Review or the Director's nominee;*
- (ii) *in accordance with paragraph 106U(1)(c) of the Act, Dr Yung pay to the Commonwealth the amount of \$42,130.60, being the amount equivalent to the Medicare benefit paid for inappropriate services;*
- (iii) *in accordance with paragraph 106U(g)(i) of the Act, Dr Yung be disqualified in respect of all services to which an item relates in Group A1 of Part 2 of the General Medical Services Table for a period of 9 months; and*
- (iv) *in accordance with paragraph 106U(h) of the Act, Dr Yung be fully disqualified for a period of six months."*

3. The grounds upon which the request to review this determination was made are as follows:

- (i) that breaches of the rules of natural justice occurred in connection with the making of the final Determination;
- (ii) that procedures that were required by law to be observed in connection with the making of the Final Determination were not observed;
- (iii) that the making of the Final Determination was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made;
- (iv) that the Final Determination involved errors of law;
- (v) that there was no evidence or other material to justify the making of the Final Determination;
- (vi) that the Final Determination was otherwise contrary to law; and
- (vii) that the directions made by the Determining Officer pursuant to section 106U of the Health Insurance Act 1973 were excessively harsh and punitive.

The Legislation

4. The relevant legislation is by way of amendment to the *Health Insurance Act 1973* (the Act) which amendment came into operation on 1 July 1994 as the *Health Legislation (Professional Services Review) Amendment Act 1994* (the amending Act). A new scheme called the Professional Services Review Scheme was introduced by Part VAA and Part VA to the principal Act. Section 80(1) describes the plan as:

"A scheme under which a person's conduct can be examined to ascertain whether inappropriate practice is involved. It also provides for action that can be taken in response to inappropriate practice."

5. Apart from the setting up of the Professional Services Review (PSR) under the control of a Director, the provisions of the amending Act made a number of other changes, the most pertinent of which are:

- (i) the application of the amending Act to dentists, optometrists, chiropractors, physiotherapists and podiatrists as well as medical practitioners;
- (ii) the replacement of Medical Services Committees of Inquiry by Professional Services Review Committees under the control of the Director of the PSR;
- (iii) the replacement of the former concept of "excessive services" (defined as the rendering or initiating of services not reasonably necessary for the adequate care of the patient) with that of "inappropriate practice" which is defined in section 82(1) and reads:

"A practitioner engages in inappropriate practice if the practitioner's conduct in connection with rendering or initiating of services is such that a Committee could reasonably conclude that:

(a) if the practitioner is a specialist the conduct would be unacceptable to the general body of the members of the speciality in which the practitioner was practising when he or she rendered or initiated the services ..."

- (iv) giving a discretion to the Committee of Inquiry to base findings on statistical sampling instead of having to individualise services as in the past - section 106H(1);
 - (v) the appointment of a Determining Officer who is responsible for making a determination on the findings of the Committee as set out in a written report - section 106Q(1).
 - (vi) the replacement of the Medical Services Review Tribunal and the Optometrical Services Review Tribunal with six Professional Services Review Tribunals.
6. It would appear that the catalyst for the legislation was Audit Report No 17 1992-1993 of the Australian National Audit Office which expressed concern that existing structures and mechanisms for dealing with professional "over-servicing", as it was then designated, were largely ineffective and the penalties which could be

imposed bore little relationship to the sums of money involved. At the second reading of the Bill the then Parliamentary Secretary to the Minister for Health said that "the Bill represents the first instalment in a series of measures that will be taken to minimise abuse of Medicare."

Procedure

7. As this is the first case brought before the Tribunal under the Act as amended, it may be useful to explain briefly the procedures which are to be followed.

The matter begins with a referral made to the Director of the PSR by the Health Insurance Commission if there is a concern that a Medicare provider may be practising inappropriately. The Director has a discretion either to dismiss the referral, if he is satisfied that there are insufficient grounds on which a Committee could reasonably make a finding of inappropriate practice, or to set up a Committee of Inquiry. At this stage the person under review may make submissions to the Director as to why the referral should be dismissed. (A further option, although not relevant to this case, allows the Director and the practitioner to enter an arrangement of partial disqualification for up to 12 months.)

8. A committee when set up consists of three members inclusive of the Chairperson, although in certain circumstances two additional experts may be appointed. All members must be similarly qualified and practising in the same speciality as the person under investigation. Upon the Committee having been convened, a private meeting is held and any meeting may be turned into a hearing. Section 103 provides that the person whose conduct is being reviewed is entitled to attend the hearing and be accompanied, but not represented, by a lawyer. Pursuant to section 104, however, he may be required to give evidence and produce documents. Procedural requirements and conduct of the hearing are set out in section 102 to section 106E of the amending Act. At the conclusion of the hearing the Committee is required under section 106L(1)(b) to give to the Determining Officer a written report setting out its findings on whether:

"...the practitioner's conduct in connection with rendering or initiating the referred services was, in the Committee's opinion, unacceptable to the general body of the members of the profession in which the practitioner was practising at the time."

Section 106N provides a mandatory direction to the Committee to suspend proceedings if fraud is suspected. The matter is then referred to other authorities.

9. Upon receipt of the Committee report containing a finding of inappropriate practice, the Determining Officer has to make a draft determination which, according to section 106U(1), must contain one or more of the following: reprimand, counselling, re-payment to the Commonwealth an amount equivalent to any medicare benefit paid for inappropriate services, disqualification from the provision of specific services for up to twelve months and total disqualification for up to six months. The draft determination is then forwarded to the practitioner for submissions, after which the Determining Officer makes a final determination. Section 114 enables a person to whom a Final Determination relates to make a request to the Minister to refer the matter to the Professional Services Review Tribunal for review.

Facts

10. Dr Steven Yung is a 39 year old married man with three children. He came to Australia alone from Hong Kong, where he was born. He was then about 18 years of age. He attended Cleveland Boys' School and then gained entrance into the Medical Faculty at Sydney University, graduating MB.BS. in 1982. Two years later, after completing post-graduate training, including time spent as a Resident at the Prince of Wales Hospital, he joined a group medical practice at 498-500 Princes Highway, Kirrawee, a suburb of Sydney, which practice had been started by a Dr Brett Gooley during 1980. The joining of Dr Yung made it a group of four medical practitioners. It appears that by 22 January 1991, Dr Gooley's group practice had been incorporated under the name Baydoor Pty Limited and Dr Yung's medical practice under the name Galcit Pty Limited, which two companies entered into an agreement on that date. The agreement concerns the terms and conditions upon which Galcit Pty Limited had the right to conduct a medical practice at the medical centre of Baydoor Pty Limited.

11. The agreement provided, inter alia,

under "Obligations of the Practitioner" -

" 2(a) *The Practitioner will bill patients seen by its employees, keep true and proper accounts of all professional visits, services and attendances provided by the Practitioner ...*

3(d) *conduct and carry on its medical practice at the premises of the Company during the rostered sessions competently, carefully and skilfully."*

under "Obligations of the Company" -

"4(a) *arrange and roster sessions for the Practitioner at the premises of the Company (by mutual arrangement)*

4(b) and (c) *provide staff, instruments, etcetera ...*

4(d) *collect and receive professional fees due to the Practitioner on behalf of the Practitioner and account to the Practitioner fortnightly ..."*

12. It was further agreed that the Practitioner would pay the company a fee equivalent to the amount determined in accordance with the schedule -which was "Flat 55% of fees regardless of hours." Clause 6 reads as follows:

"Term and Termination

(c) *The Company may terminate this Agreement by notice in writing to the Practitioner at any time if in the reasonable opinion of the Company the Practitioner is not conducting its medical practice in a manner which is proper and satisfactory or in accordance with the terms or the spirit or intention of this Agreement."*

13. In 1985 the doctor passed what he described as the Royal Australian College of General Practitioners (the RACGP) "x-ray programme for country doctors and doctors in medical centres", and in November 1990 he became vocationally registered. He also completed a course in acupuncture at the Royal North Shore Hospital and, according to his evidence, he has been involved in Continuing Medical Education programmes and Quality Assurance courses at various times. Dr Yung continued to practise at the Kirrawee clinic for more than

ten years until he resigned in May 1995. He said that his resignation was brought about by stress of the investigation.

14. The functioning and administrative procedures of Dr Yung's medical practice are dealt with in the transcript of the proceedings before the Committee at pages 6-44 inclusive, pages 60-78 inclusive and pages 112-114 inclusive.

15. In December 1992, Dr Yung was identified and interviewed at the request of the Professional Review Branch, as being a practitioner who may be practising inappropriately, and in April 1994 he received a Health Insurance Commission Medicare "feedback" for the period 1 January 1993 -31 December 1993.

16. This document disclosed the number of services claimed to be rendered by Dr Yung to be in the top 1% of services rendered by general practitioners. On 24 May 1994 the doctor was counselled and was advised of the Professional Services Review Scheme. He was told that his position would be reviewed in six months. In December 1994, whilst it was said that there was some improvement in his method of practice, it is alleged that there was no change in the pattern of servicing.

17. On 8 May 1995 a referral was made to the Director of the Professional Services Review by the Medical Director of the Health Insurance Commission. In the Referral under "Reasons for the Decision to Refer", appears the following:

"The Health Insurance Commission is concerned that Dr Yung would not be able to provide an appropriate level of clinical input when consistently rendering high numbers of services or when regularly working excessively long hours at his Kirrawee practice."

The document continued:

"In the referral period 1 January 1994 to 31 December 1994, Dr Yung provided 19,622 services under Medicare, of which 17,331 (88.3%) were provided at his Kirrawee practice mostly on Mondays, Tuesdays and Thursdays. This corresponds to an average of over 100 services on each of these days. On Wednesdays, Fridays, Saturdays and Sundays, services were mostly provided at locations other than Kirrawee. In contrast to his Kirrawee location, the number of these services averaged between 8 and 13 per day."

18. The referral thereafter set out matters the Commission had taken into account in forming a view about the alleged inappropriateness of the applicant's conduct. These included a comparison of servicing patterns of all active general practitioners in Australia, the findings of the Interpractice Comparison Survey of about 1000 general practitioners conducted by the RACGP in 1994, the draft criteria of Entry Standards for General Practice Accreditation adopted by the RACGP, the written opinion of a Professor Jill Gordon and a Professor Howie about the quality of care provided by Dr Yung. The referral then concluded with the following statement:

"Given these reasons the Health Insurance Commission is concerned that the appropriate level of clinical input could not be maintained for such long hours on a regular and continuing basis and believes that this conduct is unacceptable to the general body of General Practitioners."

19. It was upon this referral that the Director of the PSR exercised his discretion and on 5 June 1995 set up a Committee pursuant to section 93 of the amending Act. The Committee comprised a chairperson and two other vocationally registered general practitioners. On 15 June 1995 the first meeting of the Committee was held and, having considered the referral, it was decided that a hearing was warranted and this commenced and adjourned on 14 July 1995. It concluded on 28 July 1995. Dr Yung, having been given the required notifications and instructions, attended on both days.

20. On 30 August 1995, the report of the Committee was forwarded to the Determining Officer. It contained, inter alia, the unanimous finding that Dr Yung's conduct in relation to the referred services was unacceptable to the general body of vocationally registered general practitioners. The Determining Officer wrote to Dr Yung on 22 September 1995, inviting submissions on the draft determination which was enclosed, together with an explanatory statement. Dr Yung replied. A Review of the Final Determination made on 18 October 1995 is the matter now before this Tribunal.

The Review

21. The powers of this Tribunal are restricted to affirming or setting aside the determination, or making any other determination which the Determining Officer is

empowered to make. Its decision is deemed to be a decision of the Determining Officer. The hearing is an open one and the parties, who are the Applicant for Review and the Determining Officer, may be legally represented. The amending Act leaves intact the provisions in section 119(1)(a) which limit the review to deciding the matter on the papers which are before it. These are the request for review by the Minister and the documents forwarded by the Minister with the request. It also may have regard to addresses by Counsel.

22. The role of a Review Tribunal under the Act was discussed by Davies J in *McIntosh v Minister for Health* (1986) 17 FCR 463. This case was an appeal to the Federal Court from the Minister's determination on a recommendation from a Medical Services Committee of Inquiry. In discussing the difference between judicial and administrative review and rejecting arguments by Counsel, Davies J at 467 had this to say:

"A medical services review has a much wider function than that (of a judicial review). Although it is limited to a consideration of the documentary material forwarded to it by the Minister, a Review Tribunal has the duty to itself to exercise the function which the Minister (Determining Officer) himself performed, namely to determine whether or not to accept the recommendation made by the Committee of Inquiry. It does not exercise the function of review on a point of law, it exercises the function of review on the papers. Save that the Review Tribunal was limited to reviewing the documentary material, taking into account the addresses made to it, it was entitled itself to reconsider any matter contained in the report and recommendation of the Committee of Inquiry.

Certainly the Review Tribunal was not constrained "from making up (its) own mind on the evidence before it" and was not required to "confine (itself) to inquiring whether on any reasonable view of the evidence the (Committee's) decision on a question of fact can be supported. Nor was the Review Tribunal to be "slow to conclude that on no reasonable view could this (Committee) decide a particular matter of fact as it has."

23. Accordingly, in this case the review is limited to the documentary material before it - s.115 - and the addresses of Counsel - s. 119 (1) - and in arriving at our decision at all times we were mindful of these limitations - see also Hill J. in

Comptroller-General of Customs v Akai Pty. Ltd. and Others (1994) 50 FCR 511 at 521 where His Honour said:

"...The Tribunal is an administrative Tribunal and as has often been said, its function is merely to do over again what the original decision maker did, working out, as a further step in administration what it considers the decision ought to be."

His Honour then went on to cite Davies J. in Jebb v Repatriation Commission (1988) 8 AAR 285 at 288-9 where His Honour referred to the role of a Tribunal as "part of" an "administrative continuum".

The Issues

24. It is now general knowledge that in the practice of medicine, public demand has led to the rapid expansion of medical clinics such as the one in which Dr Yung was involved. Their daily operation is different in character and style from that of the traditional family general practice, but that does not mean that a different or lesser standard of medical care is acceptable. The concept of inappropriate practice applies to all duly qualified medical practitioners referred to in section 81(2) and section 82(1) of the amending Act, irrespective of the kind of practice, each case having to be judged objectively on its own facts and merits.

25. The community expects, and is entitled to receive, nothing less than expert care of its health, and the Government is entitled to expect nothing less than that the substantial subsidy to provide that care, which comes from taxpayers' pockets is well and properly spent.

26. At the hearing, Mr Matthew Smith of Counsel appeared for Dr Yung. Dr Adams, the Determining Officer, was represented by Mr Paul Roberts. Mr Smith provided an "Applicant's Outline of Submissions" at the commencement of proceedings and on the resumed hearing after the adjournment, Mr Roberts also supplied written argument on behalf of his client. These were very useful and we thank Counsel for their assistance.

27. Four preliminary applications were made by Mr Smith. Briefly, they were these:

- (i) That the hearing should not be open to the public. This was rejected, a previous provision for privacy in section 118(a) having been deleted by the amending Act.
- (ii) That new evidence should be admitted. This too was unsuccessful, the Tribunal finding after argument by both Counsel, that it has no power to do so - see Minister for Health v Thomson 8 FCT 213 and other cases already referred to.
- (iii) That the applicant's name should be suppressed. The Tribunal accepted that there were special circumstances which justified a restriction until further direction on the applicant's name being published.
- (iv) That Exhibits and "Attachments" referred to in the transcript and set out and numbered in a document called "Chronology" forwarded to the Determining Officer by the Committee on 30 August 1995 together with its report, which were not on file, should be made available to the Tribunal and the parties. It was ascertained that they were with the PSR which had apparently been advised to retain them. A direction was made that they be handed over to the Registrar of the PSR Tribunal in Canberra and this was done. They were subsequently made available for inspection in Sydney.

28. It was this withholding of Exhibits which belonged with the file that caused an adjournment at lunch time on the first hearing day at great inconvenience and expense.

29. On the resumed hearing date a further preliminary application was made, this time by Counsel for the respondent. A change was sought in the sum of \$42,130.60 directed to be repaid to the Commonwealth in the Final Determination. Paragraph 10 of the Final Determination submitted by Dr Adams read:

"Following the findings of the Committee I formed the opinion that Dr Yung should repay to the Commonwealth the difference in benefits between the amount paid for his consultation services as a vocationally registered general practitioner and the amount that would have been paid for the equivalent consultation services if he had not been a vocationally

registered general practitioner. Using the advice given to me by the Health Insurance Commission as to the difference between the benefits paid for Dr Yung's consultation services as a vocationally registered general practitioner (\$318,588.20) and those that would have been payable for equivalent consultations rendered by a non-vocationally registered general practitioner, (\$276,457.60), I determined that Dr Yung should repay to the Commonwealth that amount (\$42,130.60)."

30. However, by letter dated 2 July 1996 from the respondent's solicitor to the solicitor for the applicant, it was conceded that the original calculation of \$42,130.60, being the amount that Dr Yung was to pay to the Commonwealth under the determination, "had not been made in accordance with the requirements of section 106U(1)(c) of the amended Act". It was, therefore, requested that the amount of \$147,036.60 should be substituted "being the amount equivalent to 40% of the inappropriate services rendered during the period of the referral ..."

31. The application by Mr Roberts was that such substitution should be made and accepted as the revised and proper sum. However, at the conclusion of the hearing there was another application from Counsel who advised that the final amended amount which should be repaid was \$127,327.85, and not either of the previously submitted figures.

32. Further difficulties in the calculation of the sum to be repaid to the Commonwealth appear to be that:

- (i) there is no identification of inappropriate services in the Committee's report - see section 106U(1)(c) and (5) - nor does the Committee's report reveal that they considered all the services inappropriate;
- (ii) Counsel for Dr Adams stated that the final figure was calculated on "40% of the services being inappropriate"; he said that this was a "fair" calculation but he also conceded the figure "could equally be 5% or 90%;"
- (iii) the approach of the Determining Officer was not within his powers, or if it was within his powers could not be seen as "updating figures already before the Committee."

As this forum has decided on the evidence before it that repayment of moneys to the Commonwealth is not to be part of its determination, the question of what, if any, sum is involved becomes irrelevant.

33. The substantive submissions made on behalf of Dr Yung were that:

- (i) the original referral from the Health Insurance Commission to the Director of the PSR under section 86 was ultra vires in that it relied on excessively long hours worked rather than complying with the requirements of section 87 of the amending Act - this argument was not pursued;
- (ii) the constitution of the Committee could reasonably be perceived to be unfair and biased, taking into account the style of practice in which his client worked;
- (iii) procedures at the Committee hearing could be seen on occasions to be unfair and unjust and in some instances could be said to amount to breaches of procedural fairness;
- (iv) all or significant parts of the Report should have been rejected due to errors of judgment by the Committee as well as it exceeding its statutory mandate on occasions;
- (v) no consideration was given by the Committee nor by the Determining Officer to any matters going to mitigation despite submissions in reply which were made to both;
- (vi) the Determining Officer took over many of the misconceptions and statements of opinion expressed without evidence by the Committee on matters going to truthfulness, culpability and suitability to practice and, in believing that the new legislation was intended to punish more severely than the old, imposed a range of penalties which were harsh and punitive.

34. The grounds as set out in the request for review, which were further elaborated upon by Mr Smith in his address, have been dealt with by this Tribunal in accordance with the principles enunciated in the various authorities, and in

particular as discussed by Davies J in *McIntosh v Minister for Health* (1986) 17 FCR 463. The address of Mr Roberts was directed towards supporting the findings of the Committee and its report.

35. One view on the authorities is that this Tribunal is bound by the finding of the Committee that Dr Yung has practised inappropriately within the meaning of the legislation. In any case, having taken into consideration all matters which we are directed to do in order to exercise our function under section 199, we have independently concluded that the decision of the Committee is the correct one. That is not to say that we agree with all aspects of the Committee proceedings or its report on its findings.

36. As to the determination, we believe that the Determining Officer in the circumstances had an unenviable task, being confined as he was to the report of the Committee. It is the view of this Tribunal that both the Committee and the Determining Officer have been disadvantaged and their jobs made much more difficult due to the lack of directions (save as to sampling, which are extremely complex), regulations, guidelines or terms of reference. They were also working within new legislation which may still need refinement. In all the circumstances, it is our decision that the determination should be set aside, save for the directions as to total disqualification.

37. The decision now substituted is a substantial detriment to the practitioner, disqualification having as it does a large financial component and involving re-arrangement of his professional life for a period of time. The commencement date of the disqualification period has taken this into account. It may have been that in other circumstances, a determination involving repayment of moneys would also have been considered, however account has been taken of the long but unavoidable delay, legal expenses incurred, and the less tangible personal consequences the determination will have on a doctor coming from another cultural background. Whilst noting the submission that Dr Yung would be prepared to be reprimanded and to attend counselling, this is not considered to be required. In any case, given that there was an agreement between two companies regarding the medical practice of Dr Yung at Kirrawee, it may be that the Act does not permit orders to reprimand or counsel the applicant anyway.

Professor Priscilla Kincaid-Smith, Member:

38. I have read the reasons for the determination written by the President and I agree with those reasons and with the decision made. However, I wish to add the following comments:

39. I believe there is sufficient evidence in the material provided for me to agree with the Committee's finding that "Dr Steven Yung engaged in inappropriate practice unacceptable to the general body of general practitioners." I base this largely on the fact that during the period under review the number of patients seen by Dr Yung was above the 99 percentile of that recorded for other general practitioners over that period. This means that for all the services provided his overall time spent with a patient was less than 10 minutes. While it is quite acceptable to see some patients for less than 10 minutes, this average cannot be maintained in my view without it amounting to inappropriate practice. Further evidence of inappropriate practice is seen in the large numbers of radiographs which he carried out and the small number of positive x-rays which this yielded. This means that he was doing too many x-rays either because of the profit incentive, as these are highly rewarded, or because the time he took to see patients was too short to enable him to determine who did or did not need an x-ray.

40. I am concerned about certain deficiencies in the legislation and irregularities which occurred in the process leading to the decision of the Determining Officer. First, I understand Dr Yung's concern at the composition of the Committee Panel.

41. Second, I appreciate that this Tribunal is restricted in its jurisdiction and can only look at the Report of the Committee for the purpose of the Review. However, I believe that many of the mistakes made by the Committee were because they had no guidelines. I believe it is essential that guidelines be provided to future committees, therefore I set out my criticism of the Committee's report:

42. I believe that the Committee, because it had no guidelines, did not focus on the important matters on which it should concentrate under the Act but instead both the interviews and the report reflect a focus on matters of no relevance to this matter. The focus should have been on the inappropriateness of the services provided by Dr Yung. Instead it encompassed a large number of issues which in my view are irrelevant to this key matter:

(i) Inappropriate Services

The Committee makes no statement about the number of services conducted by Dr Yung which in its view were inappropriate practice except to say all were. This ignores the fact that it is impossible to hurry some of the services, for example, surgical suturing, and the fact that some, for example, radiograph of a hand or finger, can be very quick - especially with an assistant (which we knew he had).

(ii) Continuity of Care

The Committee make a great deal of the issue of continuity of care and questioned D Yung extensively on it but, in my view, it has little, if any, relevance in this matter. I believe that many, perhaps most, practitioners in extended hours or 24 hour clinics, would see individual patients no more often than twice a year. I think that continuity of care has little or no relevance to the question as to whether Dr Yung's practice was inappropriate or not.

(iii) Home Visits

The Committee is very critical that Dr Yung did very few home visits, yet we have independent evidence from Dr Gooley, the "father figure" and head of the Clinic in which Dr Yung worked, that Dr Gooley regarded home visits as "not appropriate use of doctors' time." We also have evidence that Dr Yung disagreed with Dr Gooley's view and tried to "improve" the situation as far as home visits were concerned.

(iv) Consultation time

While I believe that Dr Yung's consultation times were on average too short, the Committee places too much reliance on Dr Gordon's view which relates to a totally different type of practice and on Dr Howie's statement which I would regard as irrelevant to Australian practice.

Consultation time should have taken account of the "normal" procedure in extended hour clinics, which is for consultation times to be short, and the

type of patient seen in these clinics, many of whom only need a short consultation time.

(v) After hours care

The question of after hours care in the Kirrawee practice was not in Dr Yung's hands, however, contrary to the general rule in the practice, Dr Yung did give his home telephone number to some 30% of his patients. He is not obliged to have his number in the "Yellow Pages".

(vi) Records

The sample of records which the Committee chose to use were in no way a random sample nor did they take account of the directions for sampling under the Act.

(vii) Draft Standards for General Practice Accreditation

It was inappropriate for the Committee to quote "draft standards for General Practice Accreditation" which certainly had no status at the time in question, and Dr Yung could not be expected to know about the document.

(viii) Prescribing

The example which the Committee gives of prescribing an antibiotic for a sore throat is a very questionable one. Authorities disagree over how many patients should receive an antibiotic for this complaint.

(ix) Ethical/Professional Issues

The Committee makes much of this whereas it has little or no relevance in this matter.

(x) Quality Assurance

All the evidence I saw suggested that Dr Yung had come through the RACGP accreditation process with flying colours.

(xi) Working Hours

I cannot agree with the Committee's implication that 16 hours of work a day for a man of Dr Yung's age is "inappropriate practice".

Dr Peter Joseph, Member:

43. I have read the reasons for the Determination as set out by the President and agree with the decision reached. I have also read the reasons set out by Professor Kincaid Smith and wish to add the perspective of a General Medical Practitioner. It may also be useful to set out the historical background behind the introduction of the Professional Services Review Scheme.

44. The Scheme was set up to address the deficiencies in both the self regulatory mechanisms of the medical profession, and the capacity of the Health Insurance Commission to ensure that Medicare benefits were being expended cost effectively.

45. Problems arose as a result of changed insurance arrangements which permitted patients to assign Medicare benefits amounting to 85% of the "schedule

fee" to the practitioner as long as no additional charge was made to the patient. Until the inception of this arrangement all patients except pensioners were expected to contribute directly towards the cost of General Practitioner services, and general practice involved the continuous care of patients conditional only on the skills and interests of the individual practitioner. All practitioners accepted a fee system whereby some services were more highly rewarded than others, on an averaging basis. Practitioners undertook home visits and care of patients in nursing homes as professional duties despite relatively poor remuneration.

46. Assignment of benefit or universal "bulk billing" permitted some practitioners to establish "entrepreneurial" clinics which offered free "point of delivery" services. These clinics attracted mainly the more rapid, low input consultations and the highly remunerated procedural work which could be profitably provided at the rebate level as long as a high "turnover" was maintained. Patients tacitly accepted the limitations of the service provided and continued to attend a traditional general practitioner for the more involved, longer, more arduous services, including home visits and nursing home visits which provided for continuity of care.

47. At the same time newly established clinics utilised the system whereby a higher rebate was paid for services between 8.00 pm and 8.00 am. Higher fees and rebates were traditional for services provided out of normal business hours, reflecting both the (usually) emergency nature of such services and the inconvenience to the practitioner providing them. The result of this was the cancellation of the additional rebate to all practitioners. The profitability of the new clinics was maintained by providing services that were brief and often repetitive.

48. Medically safe and medico-legally safe medicine requires the allocation of sufficient time for patients to provide a relevant history, to be examined, for a diagnosis to be established if possible, investigations to be ordered or performed if required, and a management plan to be established and administered with the patient's informed consent. This is a professional constant which does not depend on location or style of practice.

49. The profession has co-operated with the Health Insurance Commission and with Government to establish the Professional Services Review Scheme with a view to identifying "inappropriate practice". The identification of what is appropriate is made by practitioners in the same discipline. It is against this background that the Professional Services Committee of Inquiry held its investigation and delivered its

report. While its methods have been subject to critical comment, its finding that Dr Yung had provided inappropriate services is supported by this Tribunal.

50. An interesting question that has been raised in Dr Yung's defence is that the Committee did not represent his peer group - this should have been practitioners working in a similar clinic. In my view this can never be an acceptable proposition as the legislation dictates that the conduct must be examined by the "general body" of the members of the specialty or profession in which the practitioner was practising.

51. Nor do I believe that a lesser standard of appropriate professional behaviour can be accepted from doctors who are not vocationally registered but who practise as general medical practitioners. Vocational registration requires that a doctor with appropriate experience or qualifications undertakes continuing education, and accepts responsibility for the after hours care of all patients seen either personally or by proxy.

I certify that this and the 22 preceding pages are a true copy of the decision and the reasons for decision herein of

The Hon Mrs Margaret Lusink, President
Professor Priscilla Kincaid-Smith, Member
Dr Peter Joseph, Member

Signed:
