MEDICAL PRACTICE AMENDMENT BILL 2008

Agreement in Principle

Debate resumed from 7 May 2008.

Mrs JILLIAN SKINNER (North Shore—Deputy Leader of the Opposition) [11.02 a.m.]: The Medical Practice Amendment Bill has been a long time coming, considering the seriousness of the issues it addresses and the fact that the Minister introduced the bill on 26 February this year. She finally outlined the detail of the bill 10 weeks later, on 7 May. The purpose of this bill is to increase the powers of relevant authorities to deal with complaints about medical practitioners as well as to improve the transparency of those processes. It also introduces mandatory reporting requirements on medical professionals to report medical practitioners who may be harming or abusing patients. This bill is critical because of the nature of the issues it addresses. I wish to refer briefly to them.

The front page of today's *Sydney Morning Herald* has alerted us again to the disaster that has befallen a number of patients of Dr Graeme Reeves, who was appointed to practise obstetrics and gynaecology at Bega and Pambula hospitals in 2002. I will go back to the beginning of Dr Reeves' problems. The Hills Private Hospital warned the New South Wales Medical Board of "a marked deterioration" in Dr Reeves' performance as early as mid 1996. The *Sydney Morning Herald* reported on 10 March this year that:

> The chairman of the Medical Advisory Board at the Hills hospital, Alfred Lewis, said he was considerably concerned about Mr Reeves's "unprovoked verbal attacks" on nurses, often within earshot of patients.
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> Dr Lewis had written to the Medical Board on July 31, 1996, after a patient under Mr Reeves's care in May 1996 died of septicaemia after giving birth because he refused to give her antibiotics.
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> It was another year before Mr Reeves was banned from obstetrics, in July 1997, but allowed to continue practising if he received psychiatric help.

In July 1997 Dr Reeves was ordered to cease the clinical practise of obstetrics after a professional standards committee of the Medical Board found him guilty of unsatisfactory professional conduct. This followed "a string of complaints, including two patient deaths". In April 2002, Dr Reeves was employed by the Greater Southern Area Health Service to do gynaecology and obstetrics. That is where the story in today's paper comes in. It reveals that there was a conversation between a senior executive of Greater Southern Area Health Service and a referee in which it was revealed that Dr Reeves was not supposed to do obstetrics. The Minister, Reba Meagher, has been asked many times to please explain how that could have happened. She has refused to answer. She was first asked last year by my colleague the member for Bega, who is in the Chamber, and I know he will refer to that. I have asked her, patients have asked her, and many other people have asked her to explain how that could have happened. I find it extraordinary that she has been unable to answer that question.

I refer to the period from April 2002, when Greater Southern Area Health Service employed Dr Reeves. From May to December 2002 he attended a total of 36 obstetric patients at Pambula and Bega hospitals. In November 2002 the Medical Board became aware that Dr Reeves was providing obstetric services. In mid 2003 Dr Reeves' employment with Greater Southern Area Health Service was terminated. In July 2004 the Medical Tribunal found that Dr Reeves was guilty of gross professional misconduct and Judge McGuire struck Dr Reeves from the register of practitioners in New South Wales.

I inform the House of some of my involvement in this matter. On 18 and 19 July 2007 I was in the Bega electorate to attend a libraries conference and my colleague the member for Bega invited me to meet Carolyn Dewaegeneire, the woman who eventually had the courage to speak out about what had happened to her at the hands of Dr Graeme Reeves. When I met Carolyn and heard her description of how Dr Reeves had removed her entire external genitalia, including her clitoris, during a routine operation at Pambula in July 2002 to remove a lesion, I was shocked. This was not a cancer; it was a lesion. She thought she was going into the hospital to have the lesion removed. She claims—and her claims have been upheld in a civil hearing—that Dr Reeves whispered to her just before she went under anaesthetic that he was going to take the lot. I was sickened by that account and I have been sickened by the accounts of the many women to whom I have spoken since who have described to me what happened to them at the hands of Dr Reeves.

On 26 September 2007 Andrew Constance, the member for Bega, delivered a private member's statement in this House and called on the Minister for Health to conduct an investigation into the employment of Dr Reeves

and a review of similar processes across her department. On 17 February 2008 Channel Nine's *Sunday* program aired Carolyn Dewaegeneire's story. I was away at that time but Barry O'Farrell, the Leader of the Opposition, issued a media release calling on the Minister for Health to ensure the matters were fully investigated, given the Health Care Complaints Commission's failure to investigate.

Neither Andrew Constance nor I had referred to the matter previously at the request of Carolyn Dewaegeneire. Carolyn informed us at our initial meeting that she had proceedings before the court and asked that we not raise it to avoid jeopardising those proceedings. At a later date the Minister suggested that we had deliberately kept this secret. I found it absolutely appalling and extraordinary that the Minister would betray a confidence that had been asked of her by a constituent, and a person who had been so severely damaged at the hands of Dr Reeves. It was an outrageous claim by the Minister and I would respect again the request made by Caroline Dewaegeneire to both the member for Bega and I when we first met her in July 2007.

On 25 February 2008, after considerable media coverage following *The Sunday* program, I wrote to Mr Peter Garling and the Health Care Complaints Commission requesting them to investigate how the Greater Southern Area Health Service employed Dr Reeves and why none of the patient complaints had been investigated by the commission. The Health Care Complaints Commission said it would work with the police in investigating the matter and I assume that is ongoing. On 6 March 2008 I received a letter from Mr Garling in which he answered my request and agreed to investigate. I have since met with Mr Garling and he has confirmed that. On 28 February 2008 a handful of victims of Graeme Reeves came to Parliament in search of answers as to how Dr Reeves was employed. I asked the question of the Premier but there was no substance to his answer. The *Sydney Morning Herald* interviewed some of those women and on 29 February 2008 reported their stories in brief:

> Christine Griffin, who alleges that he sexually assaulted her in November 2002 in his private rooms in Pambula, said the experience affected her sex life and made her afraid of doctors. "I knew what he had done to me was rape, molestation. It was terrible," she said.
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> Ms Griffin said she wrote to the Health Care Complaints Commission three days later. In 2004 she was told the matter would not be pursued because Mr Reeves had been deregistered. Ms Dewaegeneire, who won a civil case against him, was given a similar response.
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> Maree Germech alleged he sexually assaulted her in mid-2002 in his Pambula rooms.

Other former patients told me of horror stories. One former patient told me that when she was only eight centimetres dilated Dr Reeves pulled the baby out with forceps; he pulled with all his strength, with his foot on the end of the bed. I said that slowly because I want every member of the House to take it in. Anyone who has had anything to do with childbirth would know exactly what that means. One of the women that I spoke to has told me that this happened to her many years ago, but she has never been able to talk about it with anyone except her husband. That woman has difficulty wearing clothes and lives in constant pain.

Between 4 March and 7 March 2008 the Dr Reeves' matter was extensively debated in Parliament, but the Government failed once again to explain how the Greater Southern Area Health Service employed Dr Reeves. On 18 March I wrote to the New South Wales Coroner, after receiving representations from some of the patients and from Lorraine Long, who has been advocating on behalf of the patients, seeking an assurance that deaths of all patients for whom Dr Reeves was the practitioner would be investigated by the Coroner. The Coroner welcomed any correspondence about deaths that should or could be reported for investigation but the problem is that many of the alleged deaths occurred many years ago and that makes it very difficult.

I turn now to the specifics of the bill. The bill amends the Medical Practice Act 1992 and the Health Care Complaints Act 1993. It gives the board and the Health Care Complaints Commission the ability to take into account previous complaints and previous adverse findings when dealing with a complaint against a medical practitioner. It provides for the appointment of at least one non-medical practitioner on section 66 inquiries. At present Professional Standards Committee hearings are held in private, unless the committee directs otherwise, and access to Professional Standards Committee decisions is restricted.

The bill makes the disciplinary process more transparent by making the proceedings of Professional Standards Committees open to the public, unless the committee directs otherwise. It imposes mandatory reporting requirements on the medical profession, requiring a medical practitioner to report to the Medical Board a fellow medical practitioner whom he or she believes has engaged in sexual misconduct, is intoxicated by drugs or alcohol at work, or has flagrantly departed from accepted standards of practice. Under the amendment, the board has the power to require any person to provide it with information, documents or evidence to this effect. This may apply to hospitals, area health services or other health service providers, and failure to comply carries a maximum penalty of 20 penalty points.

Provisions in the bill enable the Board to have regard to the cumulative effect of all the material relating to all complaints when it makes factual findings and determines whether the conduct should be characterised as unsatisfactory professional conduct or professional misconduct. It also amends the Health Care Complaints Act to reflect changes to the Medical Practice Act, giving it powers to take into account multiple complaints against

the same practitioner and also allows a discontinued or terminated complaint to be reopened.

In the words of the Minister, "the paramount consideration is the protection of the public". It is therefore very disappointing that she has failed to also amend legislation that would require employers to check that there were no impediments to a doctor being employed as far as the Medical Board is concerned and no matters that would be likely to limit protection for the public which, in the words of the Minister, is paramount. However, the Minister has missed one of the fundamental problems in the employment of Dr Reeves. She has failed to amend legislation to make employers undertake mandatory background checks before putting doctors on the payroll and she has failed to amend legislation to make it mandatory that employers should act on such advice.

A report in this morning's newspaper states that the Greater Southern Area Health Service knew that Dr Reeves was not supposed to act as an obstetrician, yet it went ahead and signed him up to a contract to do just that. How many of the women who were treated by Dr Reeves in his rooms at Pambula Hospital and at Bega Hospital could have been saved the grief that they will carry with them for the rest of their lives and the mutilation they live with every day; and how many of their spouses, family and friends could have been saved the horror of living with these women who are permanently damaged?

The question everyone is asking is, "How could this have happened?" They are also asking, "Why has the Minister failed to include amending legislation that would mean that the area health services have to firstly check with the Medical Board and then put in place action to implement what they are told?" If there is a prohibition on a doctor acting in a particular specialty, then that should apply when they are employed. If there is a deregistration order, that should definitely apply. I made that point to the media on 7 May 2008 when the Minister introduced the bill. On 6 May 2008 the Minister told this House:

> This Government has changed the way doctors are employed in area health services and from 2005 it has required the mandatory checking of doctor's credentials.

The Minister then repeated on 8 May:

> On more than two occasions I have told this House and I have been quoted at press conferences as saying that as a direct result of Camden and Campbelltown hospitals in 2004-05 changes were made to the New South Wales Health that would mandate employers checking the background of their employees.

Minister Meagher is wrong. There is no legislation that requires the mandatory checking of a doctor's credentials. Whilst NSW Health has a policy covering this issue, it is obvious that the Minister's policies have been ignored. A policy or a guideline is just that. Employers are not obligated to follow guidelines. Yesterday I gave notice that I will introduce a private member's bill, which will cover this issue. I will move a motion to introduce the Health Services Amendment (Mandatory Background Checks of Medical Practitioners) Bill, which I will speak to at a later time. A number of people have raised concerns about the Medical Practice Amendment Bill. The Chief Executive Officer of the Southern General Practice Network unit, which is located in the southern parts of New South Wales and covers the Bega and Pambula areas, wrote:

> Changing the legislation to make the NSW Board more rigorous and more transparent than it has been is not a bad thing. However, simply addressing these issues does not, as the Minister makes out in her preliminary remarks, address the issues seen in Bega.
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> The Government should still be held accountable for the failure of its public servants to undertake the appropriate pre-employment checks as are required under public sector employment processes.
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> The general practitioners of the Far South Coast trusted that an Area Health Service appointed specialist had undergone these pre-employment checks and referred to Dr Reeves in good faith.

The last point is a devastating one. General practitioners referred their patients, many of whom had been their patients for many years, to Dr Reeves for specialised treatment because they trusted that the area health service had made reference checks and was satisfied with his qualifications. They have heard the Minister for Health say in this place that it is a policy for area health services to undertake such checks. They have now found out that is not true. Patients and patient advocates have raised similar concerns. Carolyn Dewaegeneire and Lorraine Long of the Medical Error Action Group wrote to me about the lack of mandatory background checks for doctors before they are employed. The letter stated:

> If you want to get to be a preschool teacher you must have a full background check, yet this requirement is not placed on doctors.

Further, they pointed out that the bill provides that mandatory reporting is only necessary where there has been a "flagrant departure from accepted standards". They are concerned about the word "flagrant" and argue that a doctor should be reported for any departure from accepted standards—that is, malpractice or misconduct should not have varying degrees for the purpose of reporting. Whether it is a minor or flagrant departure from accepted standards matters not. I know that the member for Macquarie Fields, Dr Andrew McDonald, would agree with me that any departure from accepted standards that has been reported to the Medical Board should be sufficient.

That is why yesterday I gave notice of a motion to introduce a private member's bill that would provide for mandatory reporting in all cases.

Other concerns about the bill have been raised that require the Minister's consideration. The Minister is not in the House, but I am sure she will read my speech carefully. Although she has not done so in the past, I expect she will do so on this occasion. If not, I hope that the Parliamentary Secretary, the member for Wollongong, draws it to the Minister's attention. I ask the Minister to address these issues in her speech in reply. The Australian Medical Association points out that currently doctors are not allowed to have legal representation at the Professional Standards Committee. It points out that the bill is sufficiently complex to warrant legal representation to ensure a fair trial.

Further, the association points out that in her agreement in principle speech the Minister indicated that the changes to the operation of the Professional Standards Committee will bring it closer in line with the Medical Tribunal, and that doctors are allowed legal representation before the Medical Tribunal. Therefore, the association states, it seems entirely reasonable that doctors should be allowed representation before the Professional Standards Committee. I ask the Minister to address this issue in her reply. Dr Eleanor Dawson, who appeared before the Medical Board some years ago and with whom I have had contact in the past, seeks an assurance that this legislation will result in not only greater transparency of the Professional Standards Committee but also greater transparency of proceedings of the performance review panels. I ask the Minister to also address that issue in her reply.

I offer support and sympathy to those who have been affected by the disgusting practices of Dr Reeves. I was sickened when I first heard Carolyn Dewaegeneire's accounts of her mutilation at his hands. I am no less sickened these many months later. I continue to raise these cases because every member of the House should know what it has meant to these women to be mutilated by this doctor. One patient told me about Dr Reeves dragging her baby out of her body when she was only eight centimetres dilated, using forceps with such tremendous force that he had his foot on the bed to apply pressure. Carolyn Dewaegeneire went to hospital for the removal of a small lesion. She came out of hospital scarred and with all her external genitalia removed. Her life will never be the same again. I am sure that the member for Bega will talk about her case in more depth. Carolyn has told me that she hibernated for a year or more and could not speak to anyone. In the end, it was her courage in speaking out that opened the floodgates and enabled so many other women to speak about the horrors they had experienced at the hands of Dr Reeves.

I have urged people who have contacted me to report their matter to the police. I do so again through the House. The police will be able to conduct a full and thorough investigation and take appropriate action. This will ensure that justice is served and prevent the situation from ever happening again. For those reasons, I support the bill. I ask all members to join me in expressing disappointment that the Minister for Health has missed an opportunity by not including a mandatory requirement for a background check of the qualifications and registration of medical practitioners, and a mandatory requirement that future employers act upon the advice they receive from such reference checks. If a check had been made before the employment of Dr Reeves in Bega, we would not see on the front page of today's *Sydney Morning Herald* an article about the mutilations at the hands of Dr Reeves of so many women in Bega and Pambula, in other areas of the State, such as The Hills and Hornsby, and in private and public hospitals where the doctor worked over the years. I support this legislation, but express my great disappointment that it does not go far enough.

Dr ANDREW McDONALD (Macquarie Fields) [11.28 a.m.]: I support the Medical Practice Amendment Bill 2008. The vast majority of doctors enter medicine to help patients. Unfortunately, some people who enter medicine are not suited to be doctors and other doctors become impaired. Such people are rare, and it is beyond the experience of most doctors who practise to meet a colleague who has such severe impairment or unsuitability as to present a threat to those we choose to help. This bill is primarily designed to help patients' safety, but it is also to the benefit of doctors. As other speakers in the debate have dealt with the other issues, I will concentrate on the section 66 issues before moving on to other issues covered in the bill.

The website of the New South Wales Medical Board states that under section 66 of the Medical Practice Act 1992 the board must, if at any time it is satisfied that such action is necessary for the purpose of protecting the life or physical or mental health of any person, either suspend a medical practitioner or impose conditions upon the medical practitioner's registration. In such circumstances, the board is to convene an inquiry as soon as is practicable. These inquiries are akin to injunctive action, where the board acts rapidly and with minimum formality to suspend or place conditions on a practitioner whom it considers poses a threat to the health or safety of any person. This is done in anticipation of an early investigation and finalisation of the matter in a more structured setting.

The board has exercised this power in a variety of circumstances, including but not limited to circumstances where practitioners have been charged with serious criminal matters, whether arising within or outside the practice of medicine; suffer from a serious impairment and demonstrate little or no insight into the extent of their problem; or have continued to recklessly prescribe narcotics in a manner which is dangerous and likely to cause harm, despite previous warnings or counselling. At present the board's options following an inquiry into a medical practitioner under section 66 of the Medical Practice Act are to take no action, to suspend the practitioner's

registration, or to impose conditions on the practitioner's registration. The board may also deal with a practitioner as an impaired practitioner.

There have been instances where the board's concerns about a practitioner related to the practitioner's level of skill, knowledge or care. In these circumstances, the board may wish to require the practitioner to participate in performance assessment under part 5A of the Act. In effect, this would occur to practitioners whose concerns are not sufficient to require conditions, but who nevertheless require some support, supervision or remediation. At present, the board's powers to refer for performance assessment after a section 66 inquiry are unclear. The Act provides that where a matter raises a significant issue of public health or safety or a prima facie case of professional misconduct or unsatisfactory professional standards, it cannot be referred to performance assessment. Performance assessment can, however, be an effective way of identifying what the issues are and deciding how they should be dealt with. This can include counselling the practitioner, referral of the matter to be dealt with as a complaint, or referral for a formal review of the practitioner's performance.

It is proposed to amend the bill to give the board this additional option in its armoury of powers for dealing with practitioners who may represent a threat to public health or safety. Again, it must be emphasised that this power is in addition to the board's powers to suspend or impose other conditions on the practitioner. To ensure that this power is used appropriately, a further safeguard included in the bill is that the Health Care Complaints Commission must consent to the imposition of a condition requiring a practitioner to participate in performance assessment. Where the commission consents to the proposal, the matter will be dealt with by way of performance assessment. In addition, if both the board and the commission agree, the matter may be dealt with by the commission also as a complaint against the practitioner. If the commission disagrees that a matter is appropriate for performance assessment, it will not proceed to performance assessment, and instead is referred to the commission to be dealt with as a complaint against the practitioner.

I will now speak on the power of the New South Wales Medical Board to obtain information for the purpose of section 66 inquiries. At present the board has no statutory powers to compel the production of documents or information for the purpose of exercising its emergency powers under section 66 of the Medical Practice Act. Whilst the board may ask for relevant information or documents from third parties, such as hospitals or other health service providers, in the absence of patient consent the disclosure of health information to the board may be in breach of privacy legislation. For example, in a decision to suspend a practitioner in 2002 the board relied upon a record of a patient's complaint in a police officer's official notebook. The board's reliance upon this information was criticised by the Supreme Court and was a factor in the court's decision to order that the board's suspension be stayed. If the board had had the power to seek other information, such as hospital records, the outcome in that case may have been different.

The power proposed to be given to the New South Wales Medical Board is similar to the power of the Health Care Complaints Commission under the Health Care Complaints Act to request information for the purpose of undertaking its assessment and investigation of complaints. The power of the Health Care Complaints Commission to compel information is limited to the complainant, the person against whom a complaint is made or a health service provider. By contrast, the power proposed to be given to the board will allow it to compel information from any person. This broader power is justified because the board, in taking or considering taking action under section 66 of the Medical Practice Act, must act to protect the health and safety of the public. Any information obtained by the board in this way may be used only by the board for the exercise of these powers. However, if the board does take action to suspend or impose conditions on a doctor, the bill will also permit the board to provide any information the board has obtained to the Health Care Complaints Commission—again, I stress, in the interest of patient safety.

I will now talk on the issue of legal representation at a section 66 inquiry. The board's powers under section 66 of the Medical Practice Act enable it to take prompt action on an interim basis to ensure the health and safety of the public. Whilst a practitioner who is the subject of an inquiry by the board is entitled to procedural fairness, the independent expert review, chaired by Deirdre O'Connor, concluded that the relative informality and speed with which the board acts were advantages of the present system. Allowing a right of legal representation to medical practitioners is not consistent with the qualities of the present system. It is likely to result only in the process getting bogged down in formality and point scoring. This would not serve the interests of public protection or, indeed, of practitioners. If the board fails to act in accordance with proper legal procedures, practitioners will have a right under the bill to appeal to a judge of the New South Wales Medical Tribunal. The bill also gives practitioners a new right to approach the board at any time to ask it to review a decision of the board under section 66 of the Act.

I will touch briefly on other issues, beginning with mandatory reporting. Concerns have been expressed publicly and in medical literature for some time that doctors can be reluctant to report misconduct by colleagues. In addition, recent experience suggests that a purely voluntary system is not always successful. Like all human beings, doctors are not always their brother's keeper. Reporting will be restricted to actions taken while practicing medicine. Therefore, doctors will not be expected to report on their colleagues' conduct outside of medical practice. For example, the provisions will not require a doctor to report a colleague who gets drunk at a private function or who has an extramarital affair. The areas identified for reporting focus on matters that directly impact on medical practice and patient safety. It is in everyone's best interests.

In developing the legislation, the Government was mindful of the need to avoid a scheme that could lead to a flood of tenuous and defensive reports by doctors. The scheme introduced in this bill has been carefully designed to ensure reporting focuses on areas of serious misconduct that impact on patient safety and care. For example, practitioners will be required to have a reasonable belief misconduct has occurred, not just a mere suspicion. Reporting is limited to three key areas of serious misconduct: sexual misconduct in the practice of medicine, being intoxicated by drugs or alcohol while practicing medicine, or engaging in conduct while practicing medicine that is a flagrant departure from accepted standards of professional practice or competence and risks harm to some other person. This will ensure that the focus remains on serious matters. I can honestly say that during my practice over 32 years I have not witnessed any behaviour that would have made me report a colleague. It is precisely because of the rarity of these issues that mandatory reporting is necessary.

The changes in this bill provide protections for people who are mandatory reporters under the Medical Practice Act. These protections mean that a report will not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct. They also mean that a doctor who reports will not be liable for defamation, nor will a report constitute a ground for civil proceedings for malicious prosecution or conspiracy. The protections that apply when a person acts in good faith extend to any person who provided the reporter with any information used to report and any person who is otherwise concerned in the making of that report. They also extend to other people, such patients, who make complaints under the Act.

These protections complement the general protections that already apply to any person who complains to the Health Care Complaints Commission or a registration board under the Health Care Complaints Act. Failure to report will be a contravention of the Medical Practice Act 1992. A contravention of that Act is considered unsatisfactory professional conduct. If the breach is serious enough, it can be treated as professional misconduct. Where unsatisfactory professional conduct is proven, the practitioner can be reprimanded, ordered to attend counselling or education courses or have conditions imposed upon his or her practice and/or be placed under supervision. If professional misconduct is proven, the practitioner can be suspended or removed from the Register of Medical Practitioners and the Medical Tribunal can order him or her not to be allowed to seek re-registration for a period. Even after that time, in order to be reregistered, they would need to apply to the New South Wales Medical Tribunal to be reregistered.

The protections or sanctions are similar in nature for those who are subject to mandatory reporting to the Department of Community Services. Again, these changes are designed to support and protect doctors who witness this completely unsatisfactory behaviour in their colleagues. The bill imposes mandatory reporting only on medical practitioners. However, the new extended protections being inserted in the legislation—that good-faith reporting will not be grounds for disciplinary action or defamation—will apply to any complainant, not only mandatory reporters. I am confident that the vast majority of medical practitioners would agree with these new measures. They have been introduced for the one reason that any person ever chooses to enter a career in medicine: to ensure patient care. I commend the bill to the House.