



## **Decision and Reasons for Decision**

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**Application Number:** 210307

**Applicant:** Mr Ian Shaw

**Respondent:** Medical Board of Queensland

**Decision Date:** 3 July 2008

**Catchwords:** Section 53 and 54E of the *Freedom of Information Act 1992* (Qld) – Amendment of investigation report – whether information is inaccurate, incomplete or misleading

### **Contents**

Summary .....	2
Background .....	2
Decision under review .....	3
Steps taken in the external review process .....	3
Amendments requests remaining in issue .....	7
Findings .....	7
Sections 53 and 54E of the FOI Act .....	7
Applications of sections 53 and 54E of the FOI Act .....	8
Entitlement to apply to amend the information .....	8
Is the information the applicant seeks to amend inaccurate, incomplete, out-of-date or misleading? .....	9
Amendment Request 3 .....	10
Amendment Request 4 .....	12
Amendment Request 6 .....	13
Decision .....	15

## REASONS FOR DECISION

### Summary

1. In respect of Amendment Request 3, I set aside that aspect of the MBQ's decision which was not to address this request and decide that the Investigation Report should not be amended in accordance with the amendment request.
2. In respect of Amendment Request 4, I affirm that aspect of the MBQ's decision which was not to amend the Investigation Report in accordance with the amendment request.
3. In respect of Amendment Request 6, I set aside that aspect of the MBQ's decision which was not to amend the Investigation Report in accordance with the amendment request and decide that the notation detailed in paragraph 70 of this decision should be added to Clause 100 of the Investigation Report.

### Background

4. By email dated 28 March 2007 addressed to the Medical Board of Queensland (MBQ) the applicant applied under section 53 of the *Freedom of Information Act 1992* (Qld) (FOI Act) for a number of amendments, in accordance with his letter to the MBQ dated 8 December 2006 (Amendment Application), to an investigation report concerning the death of the applicant's wife (Investigation Report).
5. I note that in his letter to the MBQ dated 8 December 2006 the Applicant sought six amendments (Amendment Requests 1 to 6) to the Investigation Report in respect of the following aspects of the Investigation Report:

Amendment No.	Relevant aspect of the Investigation Report
<b>Amendment Request 1</b>	the second sentence of Clause 21
<b>Amendment Request 2</b>	the second sentence of Clause 25
<b>Amendment Request 3</b>	Clause 27
<b>Amendment Request 4</b>	Clause 36
<b>Amendment Request 5</b>	the first sentence of Clause 92
<b>Amendment Request 6</b>	The first and third sentences of Clause 100

6. In a decision dated 17 April 2007 (Initial Decision), the MBQ agreed to make some amendments to the Investigation Report but refused to make others.
7. By letter dated 18 May 2007, the applicant contested the Initial Decision.
8. In a letter dated 14 June 2007 (Internal Review Decision), Mr O'Dempsey (treating the applicant's letter dated 18 May 2007 as a request for internal review of the Initial Decision) decided that:
  - the issues concerning points 1 and 3 were resolved
  - the MBQ was prepared to place a copy of relevant correspondence concerning the amendment request on the relevant Medical Board File.
9. By facsimile to the MBQ dated 11 July 2007, the applicant contested Mr O'Dempsey's decision and sought to have notations added to the Investigation Report (under section 59 of the FOI Act).

10. By letter to the applicant dated 9 August 2007 Mr O'Dempsey reiterated the contents of his letter dated 14 June 2007.
11. By email dated 18 August 2007 the applicant sought external review of the Internal Review Decision (External Review Application). In the External Review Application the applicant also indicated that the MBQ's response (as contained in Mr O'Dempsey's letter dated 9 August 2007) to his notice requiring the MBQ to add a notation to the Investigation Report did not address his requirements as the MBQ declined to attach his letter of 8 December 2006 to the Investigation Report.

### **Decision under review**

12. The decision under review is the Internal Review Decision.

### **Steps taken in the external review process**

13. As the application for external review was received by this Office outside of the statutory time-limit, in letters dated 3 September 2007, I sought submissions from both the applicant and the MBQ regarding the issues relevant to exercising the discretion to extend the time to apply for external review under section 73(1)(d) of the FOI Act.
14. In a letter dated 5 September 2007 the MBQ advised this Office that it did not wish to make submissions regarding any likely prejudice if the application for an extension of time was granted.
15. In a letter attached to an email dated 7 September 2007, the applicant provided submissions in response to my letter at paragraph 13 above.
16. In letters dated 9 October 2007 Acting Assistant Commissioner Jefferies advised the parties that she had decided to exercise the discretion conferred by section 73(1)(d) of the FOI Act to extend time for the applicant to lodge an application for review under Part 5 of the FOI Act of the Internal Review Decision.
17. In the letter to the applicant at paragraph 16 above, Acting Assistant Commissioner Jefferies stated in respect of section 59 of the FOI Act that:

*Your request to the MBQ to add notations under section 59 is separate to your application for review of the Internal Review Decision. This Office has limited jurisdiction in respect of section 59 of the FOI Act. However, I will make inquiries with the MBQ to ascertain whether or not a copy of your letter of 8 December 2006 is appended to the Investigation Report.*

18. In letters dated 16 November 2007, Acting Assistant Commissioner Jefferies provided the parties with a preliminary view in respect of the:
  - jurisdiction of this Office to conduct an external review in this matter
  - application of sections 53 and 54E of the FOI Act in respect of the six amendments requested by the applicant.
19. The substance of the preliminary view at paragraph 18 above, which was communicated to each of the parties can be summarised as follows:

## **Jurisdiction of this Office**

A decision in this external review cannot constitute a contempt of court and accordingly this Office has jurisdiction to conduct this review.

## **Amendment Request 1**

The notation proposed in the Initial Decision regarding Amendment Request 1 is appropriate, that is, that an Amendment Notation Note be made to the Investigation Report indicating that clause 21 of the Investigation Report has been amended to read as follows:

According to Mr Shaw Dr Bali did not conduct a physical examination of Mrs Shaw. He maintained that if Dr Bali had conducted a basic examination taking Mrs Shaw's pulse, blood pressure, temperature and palpation of her abdomen, then Dr Bali should have identified her condition resulting in hospitalization and treatment of Mrs Shaw's perforated ulcer and peritonitis.

## **Amendment Request 2**

This amendment request is not an attempt to reinvestigate the complaint.

The second sentence of clause 25 is inaccurate and/or misleading because it attributes statements to the applicant that are inconsistent with the evidence he gave at the Coronial Inquest.

To accurately reflect that the applicant did not state that the Hospital Conversation occurred during Dr Bali's third attendance, the following notation should be made to the Investigation Report:

Document amended under section 55(b) of the *Freedom of Information Act 1992* (Qld) in response to a request contained in an FOI amendment application dated 28 March 2007 made to the Medical Board of Queensland.

The following statement in clause 25 of this report is inaccurate and misleading:

*Dr Bali at this time asked how Mrs Shaw would feel about going to hospital and was informed that she would prefer to be treated at home.*

It is noted that during the coronial inquest into the death of Lillian Margaret Shaw (Coroner's Court, Ipswich Qld [2005]), Mr Shaw was adamant, and gave consistent evidence (which was accepted by the Coroner) to the effect that, during this third attendance by Dr Bali at approximately 4.30pm on 13 January 2005, there was no discussion between himself and Dr Bali about Mrs Shaw going to hospital.

## **Amendment Request 3**

The MBQ correctly exercised its discretion to refuse to amend clause 27 of the Investigation Report.

## **Amendment Request 4**

The MBQ correctly exercised its discretion to refuse to amend clause 36 of the Investigation Report.

## Amendment Request 5

This amendment request is not an attempt to reinvestigate the complaint.

The first sentence of clause 92 is inaccurate and/or misleading because it attributes statements to the applicant that are inconsistent with the evidence he gave at the Coronial Inquest.

To accurately reflect that the applicant did not state that the Hospital Conversation occurred during Dr Bali's third attendance, the following notation should be made to the Investigation Report:

Document amended under section 55(b) of the *Freedom of Information Act 1992* (Qld) in response to a request contained in an FOI amendment application dated 28 March 2007 made to the Medical Board of Queensland.

The following statement in clause 92 of this report is inaccurate and misleading:

*According to Mr Shaw, Dr Bali raised the issue of Mrs Shaw being admitted to hospital during the last consultation on the afternoon of 13 January 2005.*

It is noted that during the coronial inquest into the death of Lillian Margaret Shaw (Coroner's Court, Ipswich Qld [2005]), Mr Shaw was adamant that, and gave consistent evidence (which was accepted by the Coroner) to the effect that, the only time that Dr Bali asked him how Mrs Shaw would feel about going to hospital was during his second attendance, that is, on or about 11.40 am on 13 January 2005.

## Amendment Request 6

The first and last sentences in clause 100 of the Investigation Report are inaccurate and misleading because a plain reading of the clause suggests that the applicant was aware of the precise nature of the drug administered by Dr Bali on 12 January 2005 and this is contrary to the applicant's evidence at the Coronial Inquest.

To accurately reflect the applicant's state of knowledge, the following notation should be made to the Investigation Report:

Document amended under section 55(b) of the *Freedom of Information Act 1992* (Qld) in response to a request contained in an FOI amendment application dated 28 March 2007 made to the Medical Board of Queensland.

The following statements in clause 100 of this report are inaccurate and misleading:

*Mr Shaw and Dr Bali, according to his record, agreed that on 12 January 2005 Dr Bali administered Maxalon to Mrs Shaw by means (of) intramuscular injection ... Mr Shaw appeared to be aware that Maxalon had been administered and the purpose of this.*

It is noted that during the coronial inquest into the death of Lillian Margaret Shaw (Coroner's Court, Ipswich Qld [2005]), Mr Shaw gave evidence (which was accepted by the Coroner) that although he was aware that an injection had been administered to his wife, he was not aware of the specific drug administered or its purpose until after receiving the autopsy report.

20. In the letter to the MBQ at paragraph 18 above, Acting Assistant Commissioner Jefferies:

- referred to the applicant's requirement that a notation be added to the Investigation Report
  - outlined the conflicting information that the applicant had received in respect of this issue
  - noted that the applicant indicated in a letter to this Office of 7 September 2007 that *'the simplest way to address (his) requirement was to attach (his) letter of 8 December 2006 to the investigation report'*
  - asked the MBQ to confirm what steps it had taken in respect of the above.
21. In a letter received by this Office on 28 November 2007, the applicant:
- accepted the preliminary view at paragraph 19 above in respect of Amendment Requests 1, 2 and 5
  - contested the preliminary view at paragraph 19 above in respect of Amendment Requests 3, 4 and 6 and provided further submissions and evidence in support of his case.
22. By letter dated 3 December 2007 the MBQ indicated that it accepted the preliminary view at paragraph 19 above and consequently would not be making a submission in response to the preliminary view.
23. Notwithstanding its acceptance of the preliminary view at paragraph 19, as the MBQ had not responded to the matters raised at paragraph 20 above in respect of section 59 of the FOI Act, a staff member of this Office followed up this issue with a staff member of the Office of the Health Practitioner Registration Board (OHPRB) in telephone discussions on 5 March 2008 and 7 March 2008.
24. By letter dated 6 March 2008 I provided an update on progress in this external review to the applicant.
25. In a letter attached to an email dated 9 March 2008, the applicant sought clarification of some of the matters raised in my letter at paragraph 24 above, particularly in respect of section 59 of the FOI Act.
26. In a telephone discussion on 27 March 2008, a staff member of the OHPRB indicated to a staff member of this Office that the MBQ was agreeable to appending the applicant's letter dated 8 December 2006 to the Investigation Report.
27. By letter dated 28 March 2008 to the MBQ, I confirmed that the MBQ had agreed to append the applicant's letter dated 8 December 2006 to the Investigation Report and requested that once the letter was attached to the Investigation Report that the MBQ confirm this in writing to the applicant.
28. In a letter to the applicant dated 28 March 2008 I sought to clarify the matters raised by the applicant in his letter at paragraph 25 above and communicated the information at paragraph 26 above.
29. In view of the responses from the applicant and the MBQ, as outlined at paragraphs 21 and 22 respectively, the issues in respect of Amendment Requests 1, 2 and 5 have been resolved informally. I note that in its letter to this Office dated 3 December 2007, the MBQ indicated that when it received advice of a final decision in this matter, it would arrange for the necessary notations to be made to the relevant file. I consider that in this review it is appropriate that the MBQ's reference to the 'relevant file' is taken to mean each copy of the Investigation Report in the possession or control of the MBQ.

Accordingly, the issues remaining for decision in this external review concern Amendment Requests 3, 4 and 6.

30. In making my decision in this matter I have taken the following into account:

- Clauses 27, 36 and 100 of the Investigation Report
- the Amendment Application, the applicant's letter to the OHPRB dated 18 May 2007 and the External Review Application
- the Initial Decision, the Internal Review Decision
- letter from the OHPRB to Mr Shaw dated 9 August 2007
- the applicant's submissions received by this Office on 28 November 2007, including his letter dated 31 May 2005
- relevant provisions of the FOI Act
- relevant case law and decisions

### **Amendments requests remaining in issue**

31. In view of the parties' responses at paragraphs 21 and 22 above, the issues in this review regarding Amendment Requests 1, 2 and 5 have been resolved informally. Accordingly, Amendment Requests 3, 4 and 6 remain in issue.

### **Findings**

#### **Sections 53 and 54E of the FOI Act**

32. Part 4 of the FOI Act provides for the amendment of information held by government departments and agencies. Section 53 of FOI Act provides:

#### **53 Person may apply for amendment of information**

- (1) *A person who has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to the person's personal affairs is entitled to apply to the agency or Minister for amendment of any part of the information that the person claims is inaccurate, incomplete, out-of-date or misleading.*
- (2) *A person who—*
  - (a) *has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to the personal affairs of a deceased person; and*
  - (b) *is either—*
    - (i) *a person who qualifies as a deceased person's eligible family member as defined under section 51; or*
    - (ii) *a person the agency or Minister considers has an appropriate interest in the amendment of the information relating to the personal affairs of the deceased person;*

*is entitled to apply to the agency or Minister for amendment of any part of the information that the person claims is inaccurate, incomplete, out-of-date or misleading.*

33. Section 54E of the FOI Act gives an agency discretion to amend information and sets out a non-exhaustive list of the grounds under which the agency may refuse to amend relevant information, including that:

**54E Discretion to amend information**

...

(2) ...

(a) *the agency or Minister is not satisfied –*

(i) *the information is inaccurate, incomplete, out-of-date or misleading ...*

34. Section 55 of the FOI Act allows an amendment to be made by one of two methods, that is, by:

- altering the information; or
- adding an appropriate notation to the information.

**Application of sections 53 and 54E of the FOI Act**

35. In this review, the effect of sections 53 and 54E is that the MBQ is not required to amend the Investigation Report unless the:

- applicant has previously obtained access to the Investigation Report from the MBQ
- information which the applicant seeks to amend concerns his deceased wife's personal affairs
- applicant is a deceased person's 'eligible family member' as defined under section 51 of the FOI Act
- information the applicant seeks to amend is inaccurate, incomplete, out of-date or misleading.

**Entitlement to apply to amend the information**

36. The first three requirements of section 53 of the FOI Act have not been in contention between the parties and I am satisfied that the:

- applicant has previously accessed the Investigation Report
- Investigation Report contains information relating to the personal affairs of the applicant's deceased wife
- applicant is an 'eligible family member' in relation to his deceased wife<sup>1</sup> for the purposes of section 53(2) of the FOI Act
- applicant is entitled to apply for amendment of the Investigation Report.

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<sup>1</sup> Section 51(3) of the FOI Act relevantly provides that:

**51 Disclosure that may reasonably be expected to be of substantial concern**

...

(3) *In this section—*

...

**eligible family member**, of a deceased person, means—

(a) *a spouse of the deceased person; or*

...

**Is the information the applicant seeks to amend inaccurate, incomplete, out-of-date or misleading?**

37. The central issue in this review is whether the information that the applicant seeks to amend in Amendment Requests 3, 4 and 6 is inaccurate, incomplete, out-of-date or misleading.
38. The terms 'inaccurate, incomplete, out-of-date or misleading' are not defined in the FOI Act and are accordingly to be understood in terms of their usual or ordinary meaning.
39. However, in *G v Health Commission of Victoria*, Rendit J observed that <sup>2</sup>:

*[a] misleading statement or impression is one which is untrue or is likely to lead to an erroneous conclusion ...*

40. In *Re Buhagiar and Victoria Police*,<sup>3</sup> Jones J endorsed the approach taken in *G v Health Commission of Victoria*, where Rendit J indicated that the purpose of the amendment provisions concern:

*... ensuring that personal information concerning an applicant and read by third persons, does not unfairly harm the applicant or misrepresent personal facts about the applicant. It is concerned that the third persons reading the personal information do not get the wrong impression ...*

41. It is noted that the following criteria may 'usefully be borne in mind ... when considering whether the discretion should be exercised ...':<sup>4</sup>

- (a) the character of the record, in particular whether it purports to be an objective recording of purely factual material or whether it merely purports to be the record of an opinion/report of one person;*
- (b) whether the record serves a continuing purpose;*
- (c) whether retention of the record in unamended form may serve a historic purpose;*
- (d) whether the record is dated;*
- (e) whether amendment is being sought as a de facto means of reviewing another administrative decision;*
- (f) the extent to which access to the record is restricted;*
- (g) whether creation of the record or any of its contents was induced by malice.*
- (h) whether the record is part of a group of records and, if so, whether the other records modify the impact of the record in dispute.*

42. I also note that it is not the purpose of amendment provisions such as those contained in Part 4 of the FOI Act to 're-write a document in words other than the author's, save to effect avoidance of inaccuracy or inadequacy to the extent'<sup>5</sup> that it is inaccurate,

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<sup>2</sup> County Court, 13 September 1984 at 10-11.

<sup>3</sup> (1989) 2 VAR 530; in respect of similar amendment provisions under Victorian FOI legislation.

<sup>4</sup> *Cox and Department of Defence (Cox)* (1990) 20 ALD 499 at page 502.

<sup>5</sup> *Re Traynor and Melbourne & Metropolitan Board of Works* (1987) 2 VAR 186, 190. In this decision of the Administrative Appeals Tribunal (Vic), Member Galvin considered the requirements of section

incomplete, out-of-date or misleading. Nor are the provisions to be used 'as a vehicle for the collateral review of the merits or validity of official action.'<sup>6</sup>

43. Similar observations were also noted in *DenHollander and Department of Defence (DenHollander)*.<sup>7</sup> In *DenHollander* the applicant sought to amend a form that he had completed incorrectly. In that matter, Deputy President Forgie noted:

*The FOI Act does not permit a person to re-write history because he or she has discovered that he or she should have, or thinks that he or she should have, written something else. To allow history to be re-written destroys the integrity of the record-keeping process by removing the historical trail and by introducing an artificial concept along the lines that we must have always known what is now clear to us. That is not a view that has found favour with previous Tribunals (e.g. Re Jacobs and Department of Defence (1988) 15 ALD 645 at 655 (Senior Member Dwyer) and I am not in support of it.*

44. I consider each of the Amendment Requests in turn below.

### ***Amendment Request 3***

45. Amendment Request 3 concerns the first sentence of Clause 27 of the Investigation Report.

46. I note that in the Internal Review Decision the decision maker states that the applicant '*appear(s) to have accepted [the initial decision-maker's response dealing with clause 27]*' and accordingly, did not address this amendment request in the Internal Review Decision. However, in letters dated 16 November 2007, Acting Assistant Commissioner Jefferies indicated to the parties in this review that it was her understanding that the applicant sought review of this issue in his letter to the MBQ dated 18 May 2007. I note that neither party contested Acting Assistant Commissioner Jefferies' understanding of the circumstances. I turn now to consider Amendment Request 3.

47. Clause 27 of the Investigation Report provides that:

*In an electronic mail letter dated 29 June 2005 Mr Shaw maintained that in a telephone conversation with Dr Bali on 2 June 2005, Dr Bali had stated that he had not prescribed morphine for Mrs Shaw. According to Mr Shaw, Dr Bali told him that he had given pethidine and Maxalon and Dr Bali also informed Mr Shaw that there was a record of Mrs Shaw's treatment that indicated that she had a gastric ulcer.*

48. In his letter dated 8 December 2006 the applicant states:

*As to clause 27 a record of my conversation with Dr Bali was forwarded to my Barrister within an hour of it taking place. I did not rely on memory but on records.*

49. In a letter dated 16 November 2007, Acting Assistant Commissioner Jefferies communicated to the applicant a preliminary view that on a plain reading of the first sentence of the clause 27, the:

- statement, of itself, is not inaccurate

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39 of the *Freedom of Information Act 1982* (Cth), which at that time was substantially similar to section 53 of the FOI Act.

<sup>6</sup> *Crewsdon v Central Sydney Area Health Service* [2002] NSWCA 345 (Unreported, Handley JA, Ipp and Davies AJJA) 5.

<sup>7</sup> [2002] AATA 866 at paragraph 96.

- relevant statement does not give rise to an inference that when writing the electronic message, the applicant relied on his memory exclusively because it does not preclude the existence of another form of record
  - MBQ correctly exercised its discretion to refuse to amend clause 27 of the Investigation Report.
50. In submissions received by this Office on 28 November 2007 the applicant relevantly submits that:
- Dr Bail admitted at the Inquest that he had stated to the applicant that he had not administered morphine
  - although the contentious clause may not give rise to an inference that, when writing the electronic message, the applicant relied exclusively on memory, it is nonetheless incomplete because it only states 'According to Mr Shaw' when it was in fact admitted by Dr Bali.
51. I accept the applicant's contention that Dr Bail admitted at the Inquest that he had stated to the applicant that he had not administered morphine to Mrs Shaw.<sup>8</sup> However, the information in question forms part of an investigation report. Investigation reports of this type generally record the author's investigation and a synthesis of the information obtained in the investigation. As in this matter, an investigation report is a historical document that records a particular investigation undertaken at a point in time, conducted by a particular investigator. Though questions may, and often do, arise as to the thoroughness of the investigation, the information obtained, the direction taken in the investigation or conclusions (opinions) expressed in an investigation report, I would anticipate that it would be an unusual case in which an investigation report would require amendment on the basis that it is incomplete. If this were not the case, Part 4 of the FOI Act could be used as a vehicle for re-writing an investigation report, which, as noted at paragraph 42 above, is contrary to the purpose of the relevant provisions.
52. Having given the matter careful consideration, I am satisfied that the first sentence of Clause 27 is not inaccurate, incomplete, out-of-date or misleading. The statement is not inaccurate of itself as it records the investigator's understanding of the contents of the applicant's electronic email message of 29 June 2005. As I have indicated at paragraph 51 above, I accept that Dr Bali made the relevant admission. However, to amend the Investigation Report to include this information is, in my view, an attempt to revisit the investigation and re-write the Investigation Report.
53. Accordingly, I am satisfied that:
- Clause 27 of the Investigation Report is not inaccurate, incomplete, out-of-date or misleading
  - the MBQ correctly exercised its discretion to refuse to amend Clause 27 of the Investigation Report.

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<sup>8</sup> The Inquest Report states at page 9:

*[Dr Bali] further conceded that some months after the death he had told Mr Shaw that he did not administer Morphine ...*

#### **Amendment Request 4**

54. Clause 36 of the Investigation Report provides 'the consultations with Dr Bali were the only ones recorded for 2005 and are as follows' and then includes a copy of Dr Bali's clinical notes regarding consultations with the applicant's wife, prior to her death.
55. The applicant states that clause 36 does not refer to the prescription issued at approximately 4.15 pm on 13 January 2005, or that it was incorrectly (and carelessly) issued in the applicant's name and entered on his medical record, not his wife's.<sup>9</sup>
56. In respect of Clause 36 the applicant also submits:<sup>10</sup>

*Clause 36 may not be inaccurate of itself but it must be considered in the context of an investigation being conducted in relation to the complaint of negligence against Dr Bali.*

*The Investigation Report is or may be used as evidence in legal proceedings and was, according to the QMB, the result of a thorough investigation. The omission of any reference to Dr Bali's negligence in issuing prescriptions in the name of a person other than the patient for whom they were intended was a serious investigative omission.*

*At page 19 of the Inquest Transcript Dr Bali evidenced that the prescription for Maxalon and Ranitidine had been for Mrs. Shaw. The script, tendered at the Inquest, clearly stated that it was for Ian Shaw and this was further stated on the chemists label.*

*A copy of police exhibit > 2007/03/19 005 9A INFBNNNN is attached and shows the date and my name, not that of the patient ...*

*The issue of prescriptions and entry on patient records in a name that is not the patients is a serious error. Other practitioners may need to rely on the accuracy of these records. To exclude this from the Investigation into a practitioner's negligence is unacceptable.*

*I am not seeking to have the incorrect prescription form amended and no records are being re-written. I am simply requiring that more complete information is properly included and correctly referenced in the QMB's Investigation Report by way of annotation.*

*...*

*If the integrity of the Investigation Report is to be relied on, then it must be complete and accurate. Correcting an omission, which should have been included in the Investigation Report, does not destroy the integrity of the record, it better assures it. Surely this is the purpose of section 53 of the Freedom of Information Act.*

*The Evidence, Inquest Transcript, Police Report and Photographs and my own and my wife's Medical Records were all available to the investigator had they been sought. Important and relevant information was either not sought, or it was overlooked or ignored.*

*Contrary to the view expressed in Den Hollander and Department of Defence, there is no attempt to rewrite history. I have not sought to alter Dr Bali's clinical notes but to add a notation to a deficient Investigation Report.*

*A proven fact cannot be held in dispute and the identification of a fact that should have been included in the Investigation Report cannot fairly be considered as introducing an artificial concept. Ignoring the fact would create the artificial concept.*

*My request to include the fact isn't a rewrite but a correction of error of omission and, with respect, how can an agency argue that the information in the Investigation Report could*

<sup>9</sup> See page 5 of the applicant's letter to the MBQ dated 8 December 2006.

<sup>10</sup> At pages 3 and 4 of a letter received by this Office on 28 November 2007.

*be complete or thoroughly researched unless a reference is made to the negligent act of Dr Bali issuing the prescription and recording treatment under an incorrect name.*

...

57. I can empathise with the applicant's desire for the Investigation Report to provide a comprehensive picture of the circumstances giving rise to the report. However, the amendment provisions of the FOI Act are not a mechanism for correcting any perceived deficiencies in the work undertaken by agencies nor for re-investigating matters.
58. The applicant submits that the additional information he identifies could have and should have been included by the investigator in the Investigation Report and that non-inclusion of this information renders the Investigation Report incomplete. I do not accept this contention. The Investigation Report is an historical record of the investigation undertaken and is not necessarily a record of all of the facts or circumstances that might be relevant to the investigation. The clause itself merely reproduces the clinical records made by Dr Bali. As I have already indicated at paragraph 51 above, the investigator chose to include particular material in the Investigation Report. Other material was not included. If the Investigation Report is deficient or less than ideal, this is something that concerns the investigation process but not necessarily the record of the investigation. To subsequently include information that the Investigator perhaps did not in fact take into account or use in the investigation is to significantly alter the record of the investigation that was conducted.
59. Accordingly I am satisfied that:
- Clause 36 of the Investigation Report is not inaccurate, incomplete, out-of-date or misleading
  - the MBQ correctly exercised its discretion to refuse to amend Clause 36 of the Investigation Report.

### ***Amendment Request 6***

60. Clause 100 of the Investigation Report provides:

***Mr Shaw and Dr Bali, according to his record, agreed that on 12 January 2005 Dr Bali administered Maxalon to Mrs Shaw by means (of) intramuscular injection. This was administered to reduce the vomiting. Mr Shaw appeared to be aware that Maxalon had been administered and the purpose of this.***

[my emphasis]

61. In his letter to the MBQ dated 8 December 2006 the applicant indicated that the investigator had incorrectly assumed that at the time the Maxalon was administered, he was aware:
- that the drug Maxalon had been administered to his wife
  - of the purpose of administering Maxalon.
62. The applicant also stated that 'Rantidine was the only drug (he) was aware of either by name or purpose prior to (receiving) the autopsy report'.
63. In the Preliminary View Letter, Acting Assistant Commissioner Jefferies stated:

*I note that the Investigator indicates that the applicant both agreed and was aware that Maxalon had been administered. The applicant submits, and Mr Posner confirmed in the Initial Decision that the applicant gave evidence at the Coronial Inquest that, with the exception of Ranitidine, the applicant was not aware of the medication being administered to his wife until after he received the autopsy report.<sup>11</sup>*

and went on to express the preliminary view that:

*the first and last sentences in clause 100 of the Investigation Report are inaccurate and misleading because a plain reading of the clause suggests that the applicant was aware of the precise nature of the drug administered by Dr Bali on 12 January 2005 and this is contrary to the applicant's evidence at the Coronial Inquest*

*to accurately reflect the applicant's state of knowledge, the following notations should be made to the Investigation Report:*

Document amended under section 55(b) of the *Freedom of Information Act 1992* (Qld) in response to a request contained in an FOI amendment application dated 28 March 2007 made to the Medical Board of Queensland.

The following statements in clause 100 of this report are inaccurate and misleading:

*Mr Shaw and Dr Bali, according to his record, agreed that on 12 January 2005 Dr Bali administered Maxalon to Mrs Shaw by means (of) intramuscular injection ... Mr Shaw appeared to be aware that Maxalon had been administered and the purpose of this.*

It is noted that during the coronial inquest into the death of Lillian Margaret Shaw (Coroner's Court, Ipswich Qld [2005]), Mr Shaw gave evidence (which was accepted by the Coroner) that although he was aware that an injection had been administered to his wife, he was not aware of the specific drug administered or its purpose until after receiving the autopsy report.

64. In response to the Preliminary View Letter, the applicant provides the following submissions:

*My evidence at the Inquest (page 156 Lines 21 to 26) indicated my belief that the injection given to my wife on Dr Bali's first visit was for gastric flu.*

*My lack of knowledge as to the drugs or their effect was stated in my letters to the MBQ and to the HRC dated 31 May 2005. (second page 4<sup>th</sup> para) in which I stated: -*

*"I am not a medical person & have no knowledge of the effects of the drugs prescribed or the basis of the medical diagnosis made by Dr Bali."*

*While the advised annotation is accepted as technically correct, in that I had no specific knowledge of the drug or its effects, I was of the belief that it was for the purpose of treating gastric flu, the condition I thought my wife was suffering from.*

*A letter to Dr Bali, copied to his employer Dr Crowley, also dated 31 May 2005, requested advice as to the details of the diagnosis and treatment. I enclose a copy of this letter for your information.*

*I consider it would be appropriate to include reference to my letter of 31 May for the purpose of clarity. Otherwise I accept the annotation.*

65. The notation proposed at paragraph 63 above is intended to correct an inaccuracy in the Investigation Report that creates a misleading impression. I note that the applicant concedes that the proposed notation is technically correct. Notwithstanding this, the

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<sup>11</sup> pages 159 and 160 of the transcript of the Coronial Inquest.

applicant seeks to incorporate additional information into the Investigation Report that provides further explanation of what he believed was the 'purpose' of the treatment.

66. Having carefully considered Clause 100, the applicant's submissions, the letter of 31 May 2005 as well as the annotation proposed above:
- I am satisfied that the first and last sentences of Clause 100 of the Investigation Report are inaccurate and misleading because a plain reading of the clause suggests that the applicant was aware of the precise nature of the drug administered by Dr Bali on 12 January 2005 and this is contrary to the applicant's evidence at the Coronial Inquest
  - I am satisfied that the notation proposed at paragraph 63 above is sufficient to ensure that any inaccuracy and/or misleading impression is corrected (and I note that the MBQ has accepted this view).
67. I am not satisfied that appending the applicant's letter of 31 May 2005 is necessary to ensure that Clause 100 is no longer inaccurate, incomplete, out-of-date or misleading. I note, as discussed at paragraph 42 above, that it is not the purpose of the amendment provisions of the FOI Act to go beyond that which is necessary to avoid 'inaccuracy or inadequacy'<sup>12</sup> in the document.

## DECISION

68. In respect of Amendment Request 3, I set aside that aspect of the MBQ's decision which was not to address this request and decide that it is not appropriate to amend the Investigation Report in accordance with the amendment request.
69. In respect of Amendment Request 4, I affirm that aspect of the MBQ's decision which was not to amend the Investigation Report in accordance with the amendment request.
70. In respect of Amendment Request 6, I set aside that aspect of the MBQ's decision which was not to amend the Investigation Report in accordance with the amendment request and decide that the following notation should be added to Clause 100 of the Investigation Report:

Document amended under section 55(b) of the *Freedom of Information Act 1992* (Qld) in response to a request contained in an FOI amendment application dated 28 March 2007 made to the Medical Board of Queensland.

The following statements in clause 100 of this report are inaccurate and misleading:

*Mr Shaw and Dr Bali, according to his record, agreed that on 12 January 2005 Dr Bali administered Maxalon to Mrs Shaw by means (of) intramuscular injection ... Mr Shaw appeared to be aware that Maxalon had been administered and the purpose of this.*

It is noted that during the coronial inquest into the death of Lillian Margaret Shaw (Coroner's Court, Ipswich Qld [2005]), Mr Shaw gave evidence (which was accepted by the Coroner) that although he was aware that an injection had been administered to his wife, he was not aware of the specific drug administered or its purpose until after receiving the autopsy report.

<sup>12</sup> *Re Traynor and Melbourne & Metropolitan Board of Works* (1987) 2 VAR 186, 190. In this decision of the Administrative Appeals Tribunal (Vic), Member Galvin considered the requirements of section 39 of the *Freedom of Information Act 1982* (Cth), which at that time was substantially similar to section 53 of the FOI Act.

71. I have made this decision as a delegate of the Information Commissioner, under section 90 of the Freedom of Information Act 1992 (Qld).

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**First Assistant Commissioner Rangihaeata**

**Date: 3 July 2008**