



Transcript of Proceedings

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IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

BUNDABERG HOSPITAL COMMISSION OF INQUIRY

COMMISSIONS OF INQUIRY (No. 1) 2005

BRISBANE

..DATE 30/05/200

..DAY 5

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THE COMMISSION RESUMED AT 9.32 A.M.

COMMISSIONER: I see there has been a reshuffle. Always nice to see a different array of faces in the front row. Over the past 72 hours there have been a few developments, and before we get into the evidence I think it is convenient to deal with some of those. The first and most important relates to the fact that the CMC have announced that the inquiry which was scheduled to commence next week is not going ahead. Obviously that has some implications for us. I mean no criticism at all in saying this, but the course which we took last week might have been rather different if we hadn't been expecting that inquiry, and, in particular, the witnesses who were called last week would have been allowed to be cross-examined rather than leaving the witness-box without being cross-examined if we had known that the CMC inquiry was going to be postponed.

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That leaves us in the awkward position that a number of people have been the subject of criticism and adverse comment which they have not had an opportunity to respond to and I am acutely aware of the unfairness involved in that. I have discussed this matter with both of the Deputy Commissioners and also with counsel assisting, and in an attempt to redress that unfairness what I am proposing is that anyone who feels that they have been mentioned in a way that is adverse or critical will be given an opportunity this week, either personally or through their legal representative, to make a statement to the inquiry giving their side of the story. I know that's not a complete answer to the difficulty, but it seems to be the best we can do in the circumstances to give those people an opportunity to set the record straight.

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In that context, may I offer some remarks, particularly for the assistance, Mr Ashton, of your client, and also I should say in relation to Mr Diehm and your client, again we would not be in the present situation if we hadn't expected that your clients would have the opportunity next week to fully defend any allegations against themselves and it is unfortunate that things have turned out this way.

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You will both be aware that amongst the Terms of Reference of this inquiry we're asked to comment on whether there is any evidence of either criminal conduct or official misconduct. I think in the circumstances it is appropriate that I say at the earliest time that from the evidence so far heard, I am of the view, and the Deputy Commissioners are also of the view, that nothing has emerged, either in relation to Mr Leck or in relation to Dr Keating, which would excite our interest in relation to that aspect of the Terms of Reference.

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There is one possible exception - and I don't want this comment to be misunderstood - the only possible exception is in relation to the circumstances relating to Dr Patel's airfare back to the United States because that involved an expenditure of public money. Questions do arise as to whether

that payment was properly approved. I emphasise again I don't want that to be misunderstood. I am not suggesting and I do not suggest that there was any criminality or official misconduct involved in that; I am simply saying we will have to look at that a lot more closely in order to ascertain whether there is any issue to be canvassed in relation to that aspect of the matter.

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Having said that, you will both have the opportunity, as will the representatives of anyone else who feels that they have been adversely mentioned, to make a statement to the inquiry during the course of the week. Specifically concerning Dr Keating, I should also mention that I spoke to Mr Diehm on Friday afternoon and indicated to him that Dr Keating would not be required to return this morning but that Mr Diehm would have the opportunity to adduce further evidence from Dr Keating if he chose to do so in order to answer some of the issues which have been raised and that he will have the opportunity to do so without interruption.

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Mr Diehm, have you concerned that aspect-----

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MR DIEHM: Yes, Mr Commissioner. The opportunity would be availed of at a later time rather than this morning, if that's acceptable to the Commission.

COMMISSIONER: That's certainly acceptable and I thank you for taking those instructions. For the time being, Dr Keating is excused from further attendance until advised otherwise by the Commission. Thank you, Mr Diehm.

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Another matter which has arisen over the last 72 hours is that there was a closed session of the inquiry on Friday. I want to make it clear that this was not done for any reasons of secrecy or confidentiality; it was simply because the matter which arose was expected to take only a few minutes, and in fact only did take a few minutes, and I wasn't going to put everyone to the trouble and expense of coming along for a short period of time.

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The way that that matter arose was that the President of the Australian Doctors Trained Overseas Inc happened to be in Brisbane Friday. The doctor concerned resides ordinarily in Sydney and he wished to have the opportunity to appear before the Commission of Inquiry and seek leave to appear. That leave was granted, although I think it is fair to say that the involvement of that organisation, the Australian Doctors Trained Overseas Inc, will probably be limited to putting in a written submission at the end of proceedings and perhaps offering some documentary evidence which may be of interest to the inquiry. That is the only matter which transpired at the closed hearing of the Commission on Friday. Nothing else took place behind closed doors, as it were.

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The third thing that I wanted to mention arising out of press reports over the last 72 hours is that there was an article in The Australian on Saturday morning written by Mr Sean Parnell which in a very delicate way implied that there might be some

favouritism in that Dr Molloy is being allowed to give evidence in a day/night sitting. It may well be the case that Mr Parnell wasn't aware of the fact that we had indicated from the outset that the same opportunity is available to any medical practitioner, and, indeed, any other health care professional, including any nurse who would find that he or she is otherwise taken away from their professional duties.

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I would be very disappointed if anyone thought that this was a special favour given to Dr Molloy or, indeed, to the AMA. It is, as I say, available to all health care professionals and, indeed, when the inquiry moves to Bundaberg and we take evidence from so-called victims or members of their families, the same opportunity will be available to them as well, so that, for example, if someone is working full-time with their ordinary work and it is inconvenient for them to come during the day, we will try to schedule things in a way which suits their convenience. So there is no special consideration or favouritism being given to Dr Molloy or to his organisation or anything of that nature.

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Yet another matter which emerged over the weekend is, as I am sure we're all aware, there has been some publicity concerning the maternity unit at the Royal Women's Hospital Herston. I propose to say nothing about that matter for the time being, because it is not immediately apparent to me that it falls within our Terms of Reference. We understand that some material will be coming to the Commission of Inquiry. We will look at that material and we will consider where we take it - if indeed we take it anywhere for the moment. As I say, I don't want to make any comment on that aspect because it is not clear that it falls within our Terms of Reference.

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I should finally say something about the course of evidence today. I have spoken on Friday and again this morning with Senior Counsel assisting, Mr Andrews, and I understand it is proposed to focus on evidence relating to the Medical Board of Queensland, which seems an appropriate and convenient course. In accordance with a ruling earlier issued, Sir Llew Edwards will be excusing himself from the Bench during that aspect of the evidence.

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Mr Andrews - perhaps Mr Devlin can help with this as well - how long do we expect that phase of the evidence to last?

MR DEVLIN: There are three witnesses, Commissioner. There is the Deputy Registrar, Mr Michael Demy-Geroe, who will go into the detail of Dr Patel's application for registration here under the Area of Need's specification; there is the executive officer of the Office of Health Registration Boards which oversees that process, Jim O'Dempsey; and there is the chairman of the Medical Board of Queensland, Dr Mary Cohn. All three witnesses are available for today and tomorrow's sittings. Comprehensive statements with quite a number of exhibits have been submitted to the inquiry some time ago, and if given the opportunity I would want to draw the Commission's attention as briefly as I can to the key elements.

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COMMISSIONER: Thank you, Mr Devlin. I appreciate that very much. What I had in mind is that Mr Andrews would formally call the witnesses and put in their statements and then, subject to any specific matters that Mr Andrews wants to raise, the witnesses can then be turned over to you, as you say, to highlight any matters which are of particular interest or concern to the inquiry. 1

MR DEVLIN: Thank you. I am content with that. 10

MR ANDREWS: Commissioner, for schedules of witnesses, I am curious to know whether Dr Cohn needs to be called for an evening; that is after 4.30 p.m.

MR DEVLIN: No, she does not. If the time for her availability falls for tomorrow, she has made time available to be available to the Commission in ordinary sitting hours tomorrow.

COMMISSIONER: Thank you for that, Mr Devlin, and please pass our thanks on to Dr Cohn for making those arrangements. Mr Andrews, I was going to ask, before I invite Sir Llew to excuse himself from the Bench, whether there are any matters that anyone wishes to raise arising out of the comments that I have made this morning or, indeed, any other aspect of the inquiry to date. 20

MR ANDREWS: There is one matter I wish to raise, Commissioner, and that is whether tomorrow, so as to accommodate what might be lengthy evidence from Dr Molloy, whether there will be an evening session starting later than 9.30 a.m. 30

COMMISSIONER: Well, my proposal, subject to what anyone else wishes to say regarding their convenience, is that we will not sit tomorrow morning. If there is further evidence, for example, relating to the Medical Board we can resume at the ordinary time after lunch, say at 2 o'clock or 2.30, and then Dr Molloy's evidence can commence at 4.30. We will have some sort of break during the evening and continue till about 9 p.m., and then I understand that Dr Molloy is also available on Thursday in the late afternoon and evening, and, if necessary, we can repeat that process on Thursday. 40

MR ANDREWS: Thank you, Commissioner.

COMMISSIONER: That also reminds me, given that the CMC inquiry is not proceeding next week, I wonder if everyone at the Bar table can check their diaries and see whether it is convenient to continue on Friday. We have again, amongst the Deputy Commissioners and counsel assisting, discussed the possibility of using up the time that was allocated for the CMC inquiry. We are inclined to think that it is undesirable to do so for a number of reasons. One is that we don't have witnesses prepared and scheduled to give evidence during that period. Another reason is that, given the - forgive me for saying so - the calibre of the legal representatives at the Bar table, it would be little much to expect that all of you 50

would be available at such short notice. So our present intention is that we will not sit next week or the week after. Although, if anyone has any views to the contrary we will certainly listen to them. Is there anything that anyone would like to raise at this stage? Ms Kelly? 1

MS KELLY: Commissioner, in relation to the authorisation pursuant to section 62(f) that was produced last Wednesday night, I have a further submission to make. The Commissioners will recall that last Wednesday I made an application which was answered, in effect, by the voluntary production by the Director-General of Queensland Health of a 62(f) authorisation to all designated persons----- 10

COMMISSIONER: Yes.

MS KELLY: -----to make such disclosures to certain persons as were necessary for the purposes of this inquiry. It came to my attention on Thursday afternoon that notwithstanding the Director-General's dissemination of that authorisation via the intranet of Queensland Health, there are many persons who remain affected by the authorisation but unaware of it. Those persons would include any part-time staff who are not given access to the intranet and would include former designated persons who are similarly covered by the authorisation. So in my respectful submission, the appropriate response, given the way the authorisation came into existence, is for the authorisation to be tendered, made an exhibit of this Commission, at which case it can then immediately go on the Commission's website. And, secondly, I invite the Commissioners to make it known to the press how important such an authorisation might be, a knowledge of the authorisation might be to the flow of information unimpeded by risks of gaol to this Commission. 20 30

COMMISSIONER: Thank you, Ms Kelly. I have to say that I and the Deputy Commissioners were very grateful to the Director-General for acceding to our encouragement to issue such an authorisation. It is not our business to tell the Director-General how to run his department. I am sure Mr Boddice will relay your concerns to the Director-General. It may be, for example, that posting copies of the authorisation on noticeboards around hospitals throughout the State would be a useful thing. It may be that Mr Boddice would like to tender the authorisation so it does go on the inquiry website, but for the moment I am not inclined to offer any further suggestions to the Director-General as to how he should run his department. And it seems to me quite candidly that, Ms Kelly, you're in a position, that is to say the organisation that you represent is in a position, and similarly Mr Allen on behalf of the Nurses' Union is also in a position to convey that information to your members, and for the moment I can't see that there is likely to be any major difficulty. 40 50

Similarly, you're quite at liberty to make your own representations to the press and media, and if you wish anything to be more clearly or more fully reported than it has

been already, I am sure you will obtain an appropriate response from the press and media, but, again, I don't think it is appropriate for me to be telling the press what they should or should not be reporting. The whole purpose of operating this inquiry on such an open footing is to give the press and media an opportunity to make their own judgment as to what the people of Queensland need or want to hear rather than have the inquiry, as it were, spoon feeding them things that we think they should be reporting.

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So whilst I understand your concerns and whilst I accept that they're perfectly sincere and genuine, I am inclined to leave it to Mr Boddice, and through him his client or the Director-General, to determine how they should respond to the matter you have raised. Is that in order, Mr Boddice?

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MR BODDICE: Yes, thank you, I will ensure they are passed on to-----

COMMISSIONER: Thank you, I appreciate that very much. Thank you, Ms Kelly, for raising that. Anyone else? Well, we will just adjourn for literally half a minute so that the Bench reconstitutes and when we return we'll proceed with myself and Deputy Commissioner Vider to deal with the Medical Board evidence. We will adjourn for a minute.

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THE COMMISSION ADJOURNED AT 9.50 A.M.

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THE COMMISSION RESUMED AT 9.51 A.M.

COMMISSIONER: Thank you, Mr Andrews.

MR ANDREWS: I call Michael Stephen Demy-Geroe.

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MICHAEL STEVEN DEMY-GEROE, SWORN AND EXAMINED:

MR ANDREWS: Mr Demy-Geroe, will you tell the inquiry your full name, please?-- Michael Stephen Demy-Geroe.

And do you have with you a copy - a statement sworn the 17th of May 2005?-- Yes, I do.

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Signed on that date, in any event?-- Yes, I do.

Are the opinions expressed in that statement by you honestly held by you?-- They are.

And are the facts recited in that statement true to the best of your knowledge?-- Yes, they are.

I tender that statement.

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COMMISSIONER: Thank you. Do you have a copy which can become the formal exhibit for the purpose of the inquiry?

MR ANDREWS: I was hopeful that the witness's copy could be marked and then returned to him for the purpose of his examination.

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COMMISSIONER: That's a good idea.

MR DEVLIN: I have a copy of the statement and annexures which I would be happy to have tendered.

COMMISSIONER: Thank you. That's perhaps even more convenient. In any event, the statement of Mr Demy-Geroe will be exhibit number 24.

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ADMITTED AND MARKED "EXHIBIT 24"

COMMISSIONER: Needless to say, copies of that statement have been available to myself and Deputy Commissioner Vider. Thank you, Mr Devlin. I might also indicate, as everyone knows, it has been a practice for exhibits to be put on the inquiry website. When we come to an exhibit of that size, I don't see any particular purpose in putting the entire exhibit on the website. What we'll probably do is simply put the statement of Mr Demy-Geroe on the website and if particular annexures or attachments of the statement are referred to in the course of evidence or, for example, highlighted by Mr Devlin, then those attachments may also be included on the website. I should also indicate for the public, as well as the press and media, that any exhibit that anyone is keen to see that doesn't go on the website can be accessed by contacting the Secretary to the inquiry.

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Thank you, Mr Andrews.

MR ANDREWS: Thank you, Commissioner. I have no questions for the witness.

COMMISSIONER: Mr Diehm?

MR DIEHM: Mr Commissioner, may I inquire through you as to whether or not there are further copies of the statement available for the other parties?

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MR DEVLIN: I have copies.

COMMISSIONER: I had hoped copies had been supplied to everyone. Is that not the case?

MR DIEHM: It may be that others have.

COMMISSIONER: In any event, Mr Diehm, you are obviously entitled to have a copy.

MR DIEHM: Thank you.

MR ANDREWS: Commissioner, efforts were made to supply copies on Friday evening but not all parties were fortunate enough to receive them.

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COMMISSIONER: I understand entirely. And might I also - I am sorry, I am talking a lot today. I should learn to shut up. But may I say that anyone supplying statements or similar documents to the inquiry is encouraged to do so in an electronic format because it makes it so much easier to disseminate them by email to various counsel and solicitors at the Bar table, particularly if copies of documents can be produced in a PDF format, as, for example, Queensland Health has done, that makes the process very much easier and also, incidentally, makes it easier for inquiry staff to put them on the website. Thank you. Mr Devlin?

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MR DEVLIN: Thank you, Commissioner.

EXAMINATION-IN-CHIEF:

MR DEVLIN: Mr Demy-Geroe, you are the Deputy Registrar of the Office of the Health Practitioner Registration Boards, correct?-- That's correct.

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You have held that position since May of 1988?-- That's true.

And the Office of Health Practitioner Registration Boards currently supervises 13 Health Practitioner Registration Boards?-- That's correct.

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One of those is the Medical Board of Queensland, correct?-- Yes.

But the others would include such boards as the Chiropractors Board, the Dental Board, and so on, Optometrists Board?-- All the health - all the recognised health professions.

Thank you. Is this the position: that the office of which you are a Deputy Registrar provides services to all of those boards on a contract of service?-- That's right.

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On an agreement?-- That's right, as a service agreement.

Now, that hasn't always been so, has it?-- No, that's a situation that's arisen out of the new legislative scheme.

Try and keep your voice up, please. Out of the new legislative scheme. When was the new legislative scheme

inaugurated?-- It was progressively initiated. I believe the Administration Act came in in 2002.

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So this is a relatively recent development for all of these Boards?-- Yes.

Correct?-- Yes.

Now, one significant organisation that is not covered by the Office of the Health Practitioner Registration Boards then is the Queensland Nursing Council, correct?-- That's true.

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It operates its own organisation, correct?-- It is separate, that's right.

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Now, I'd like to just take you briefly then to the functions of the Office of Health Practitioner Registration Boards. Firstly, it supports the various boards in the conduct and recording of their meetings, for example?-- That's right.

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Secondly, it manages complaint services on behalf of those boards - those various boards?-- Yes.

Thirdly, and particularly relevantly to the Medical Board of Queensland, it conducts health assessment and monitoring services of practitioners. Is that correct?-- Yes, yes. The major part of the health assessment and monitoring program is the Medical Board.

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Right. And that's targeted to this particular area, is it not: that doctors handling dangerous drugs may, on occasions, become incapacitated through misuse of substances and then are monitored as to whether they are fit to practise and can be assisted back into proper practice. Would that be a fair summary of that particular role?-- That's the purpose of the program.

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Thank you.

COMMISSIONER: Is it invariably drug-related?-- No, no, it can be other issues. Doctors can have health problems that arise from other than drug misuse.

What about other forms of misconduct or professional ineptitude?-- No, that would come under the professional standards, which is more complaints related.

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I see.

MR DEVLIN: So the matter that the Commissioner just referred to would fall within your office, the functions of your office, within the Complaints Management Services, that last matter that the Commissioner referred you to?-- Would come under Complaints Management Services, yes.

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Thank you. Your office also provides professional advice and support services?-- Yes.

And also corporate support services?-- Yes.

Well now, Mr Demy-Geroe, would you then describe your particular function as it interfaces with the Medical Board of Queensland and its functions? Do you have, in the exercise of your role as Deputy Registrar, any particular responsibilities with regard to the other 12 Health Practitioner Registration Boards?-- No, none whatsoever.

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So your role is specifically targeted to the roles and functions of the Medical Board of Queensland?-- Yes.

Now describe what those functions are, please?-- I manage the Registration and Administrative Support Services. I'm a delegate for - I'm a financial delegate. I'm a delegate for

approving a Special Purpose renewal applications, and mutual recognition applications.

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So we've heard a lot about the Area of Need specifications so far. What does that fall into? What area of your activities does that fall into?-- That's Registration Services.

Registration Services. So if an Area of Need within Queensland is identified by - who identifies the Area of Need?-- Under the Act that's the responsibility for the Minister. The Minister's delegate would usually certify an Area of Need as severe, or any Area of Need.

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We could all imagine areas of need that relate to far-flung areas in the deep west of Queensland needing a medical officer. Are there any other examples of Area of Need that you can give us briefly?-- Well, the majority of areas of need that are identified are in the public system firstly, in hospitals. There's another category of locum and deputising services. That's GPs that need holidays, or a GP leaves a particular practice and they need someone to back it up, after-hour services, and also Functional Areas of Need which is a category - or a class of position which might be a recognised as being inadequately serviced.

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So even a particular specialty within medicine might be regarded as an Area of Need, though not geographically. Is that fair comment?-- That's correct. In fact, I believe the Minister's made a declaration for an Area of Need at large for anaesthetic services in Queensland.

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Now, on the other side of the equation then you have graduates of other medical schools throughout the world who make it known that they would like to practise in Australia. Does the Office of Health Practitioner Registration Boards receive such expressions of interest directly from overseas trained doctors?-- To fill Areas of Need?

Yes?-- We receive quite a number of inquiries. We don't take them any further because it really revolves around an Area of Need declaration. So we might advise them on what they need to do, but we wouldn't take an application because they're usually just general inquiries.

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And so by what means does the application for registration come to your particular department from an overseas trained doctor? By what means does it customarily come?-- It's a consequence of someone having been recruited usually, or somebody having found a position somewhere and then being recruited or being offered a position. So the sponsor would go to Queensland Health first and get a declaration for an Area of Need.

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In the instant case of Dr Patel, if the job is within Q Health itself, then what happens? Is there usually an application for that position from an overseas trained doctor?-- Yes.

And then what function - having received that within your office, what function does your office play then?-- We would process the application. We'd make sure all the documentation's to hand which would enable the Board to make a considered decision on the application, and submit it to the - firstly to the Registration Advisory Committee which would review the suitability of the person for the identified need, and then we'd process it for approval by the Board.

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Very well. Now, have you attached to your statement an attachment MDG3 which is a document which you compiled on the 8th of April setting out the circumstances of the registration of Dr Jayant Patel?-- I have that document before me.

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Thank you. Now, was that report ultimately tabled in Parliament later in April by the Minister?-- Yes, it was an attachment to a subsequent report which was prepared by the Executive Officer and myself.

Thank you. If we go to paragraphs 2.1 and 2.2 of the memorandum, you set out in paragraph 2.1 that Dr Patel was registered by the Board on 11 February 2003 upon the recommendation from the Registration Advisory Committee. Could you explain what the Registration Advisory Committee is, please?-- The Registration Advisory Committee is one of the standing committees of the Medical Board, and its function is to advise the Board on registration matters generally, but specifically the majority of the registration matters that it would deal with would be Special Purpose Registrations, but it also advises on any policy that's necessary for the Board to consider.

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Is it, by its nature, a subcommittee of the Medical Board?-- It's a subcommittee.

Thank you?-- Well, it's a committee. The Act provides for the establishment of committees. So it's actually a standing committee as opposed to an ad hoc committee.

Yes, thank you. Now, how does your office then resource that committee so that it can make its recommendations to the Board?-- The office reviews all - or assesses, assembles the applications initially in accordance - so that the application is correct and ready to be considered by the Committee in accordance with the guidelines. The Assistant Registrar and myself then support the Committee directly in reviewing the applications at Committee meetings and - sorry, the question was how was-----

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You've given me some idea. Can you tell me this: how many staff as of February 2003 - January/February 2003, when Dr Patel's application was processed - how many staff were performing this function under your guidance?-- There were four. There were four actually, but not - there weren't four that were dedicated to an Area of Need. There are five or six categories of Area of Need - sorry, of Special Purpose Registration and staff were dealing with all those. The staff that were dealing with Area of Need registration, which is the

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category that Dr Patel was registered in, was 1.4, I believe. 1

So almost one and a half staff members in any given period of your four was dedicated to the Area of Need-----?-- Full-time, that's right.

-----assessment?-- Mmm.

Now, has that changed since January/February of 2003?-- Yes. 10

How?-- Well, the staff's been increased. We now have a Senior Officer and three staff that deal with - well, Special Purpose Registrations, but they would deal with the whole lot. So four staff that deal with - mainly with special - with Area of Need Registration.

So am I right in thinking, from what you've said, that since January/February 2003 the number of staff dedicated to resourcing the Registration Advisory Committee specifically on this area of registration - that is registration for Area of Need - has increased from 1.4 staff members in any given period to four?-- That's right. 20

Or is it not that simple?-- Well, it's not quite that simple, but that's the effect of it.

Right?-- There are other small categories of registration that they deal with, but-----

But this is by far the largest?-- That's right. It would be an increase of three. 30

Beg your pardon?-- It would be an increase of pretty well three.

COMMISSIONER: Mr Devlin, if you will permit me, just dealing with this Area of Need question, looking at the submission received from Queensland Health, there was a reference in that submission, which perhaps I have misunderstood, which seems to suggest that the whole of Queensland is now nominated as an Area of Need. Do I take it from your evidence that that's only in relation to particular areas of specialisation such as anaesthetics?-- I'm not aware of general - there is - there was a ministerial policy on Area of Need, which I'm not sure is still in force, but clearly there is a policy. I'm not familiar with the details of it. 40

Right. Thank you. Sorry, Mr Devlin.

MR DEVLIN: Now, in paragraph 2.2 you set out some details of the documentation submitted by Dr Patel in the application that was ultimately approved by the Board on 11 February 2003, but I should have asked you this before I get to that: can you give us some idea of the workload then of the Registration Advisory Committee as of January/February 2003 in the processing themselves at the committee level, how many applications would be processed in any one meeting?-- Well, it varies throughout the year. The peak periods for medical 50

staffing are July/August and December/January.

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Do you know why that is?-- Well, the hospitals recruit - they have their contracts and they seem to - they have a medical year which commences usually in the first week of the year, and that's when the new contracts take on, and with the nature of the staffing with Area of Need doctors, a lot of them move on, a lot of new ones come in, and so there's peak activity in our unit in July/August and-----

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And December January?-- -----December/January.

So in those peak periods, can you tell us how many registrations are processed by the Registration Advisory Committee?-- At that time it could have been as many as 200, but there has been a shift now with renewals taking place outside of the Board.

I was really asking you about January/February of 2003?-- Probably 150, 200.

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And how often would the Registration Advisory Committee meet in order to process that number in any one sitting?-- Every fortnight.

Well, how did it manage to turn its mind to up to 150 or 200 registrations under this classification?-- It would look hardest at those that were new applicants altogether.

Right. So there were a lot of renewals, were there, amongst that figure?-- There were a lot of renewals.

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How often was an overseas trained doctor required to renew any registration granted under these arrangements?-- Registration is approved for a maximum period of 12 months, so if they were shorter periods and they were extending, obviously it would be more often, but generally it would be once every 12 months.

On a renewal, back then - January/February 2003 - was it required or expected that the performance of the overseas trained doctor would be the subject of some commentary?-- Oh, certainly. That's - for renewal, that was always the principle determinant, that the person had performed satisfactorily in a position.

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So there would be some notation from some person superior to that overseas trained doctor?-- There would be a performance report.

A performance report, and if that performance report was positive then the renewal was more routine than it might otherwise be. Is that a fair statement?-- That's correct.

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So are you able to give us a break-up of fresh applications for registration back in January/February 2003 as opposed to renewals where we can assume that most would have been relatively routine for the Committee to consider?-- I don't have-----

Not possible to give that break-up? Okay. Well, going to the fresh applications, where everything has to be looked at anew, how would the Committee have its attention directed to those that it really has to specifically consider?-- It would actually look at all of them, but the ones that needed to be considered afresh were the ones that would take the most time.

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And would the assessors working under you - were they called Assistant Registrars?-- Registration officers.

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Registration officers. What administrative officer standard were they at back in 2003?-- A03.

A03. Would they themselves draw attention to aspects of these applications for consideration by the Committee, or was that more your function?-- No, they - the registration officers - if they noted an actual deficiency, they - the instruction was they shouldn't put it before the Committee. If it was one that couldn't be overcome - it would require a determination by the Committee - they would certainly draw attention to it.

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You too would do that?-- If it was drawn to my attention, yes.

And do you have a deputy at a higher level than A03 as well?-- There's an Assistant Registrar who assists as well.

That was the case back then in January/February?-- That was the case, and the Assistant Registrar would have closer contact with the registration officers on a day-to-day basis.

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So in your experience the Registration Advisory Committee did turn its mind to each of these many applications?-- Yes.

But some would receive more attention than others?-- Yes.

Righto. And that would be as a result of anything drawn to your attention by your Assistant Registrar assessors - sorry, the other term you used? Administrative officer?-- Registration officers.

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Registration officers. Sorry. Now, in 2.2 then, getting back to the qualifications here of Dr Patel that were submitted, you've pointed out in your memorandum which was ultimately tabled in Parliament that Dr Patel put forward a primary medical degree gained in 1973 from Saurashtra University-----?-- Yes, that's correct.

-----in India. Has that proven to be correct?-- Yes, I've no reason to doubt that.

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A 1976 Masters Degree in Surgery also from the same university. Is that correct?-- That's correct.

And then he put forward documents, according to your memo, that he'd subsequently undertaken internship and residency in surgery at Rochester University School of Medicine, New York,

between 1979 and '81. Is that right?-- Yes, that's true.

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Residency in surgery at Buffalo, New York, until 1984. Is that correct?-- Yes.

And he provided evidence that he'd obtained certification from the American Board of Surgery in '88 and was re-certified in '96?-- That's true.

And anything that's happened subsequently has not caused you to doubt the veracity of those claims in his application. Is that the position?-- That's correct.

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Now, tell us something about overseas trained doctors who, though they might come from a less compatible academic background such as India - would that be a fair comment? That it's less compatible than other education systems - medical education systems throughout the world in your experience?-- Less compatible?

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Compatible with the Australian system of education?-- I can't judge that. Some - the Indian medical schools would vary, just as ours probably do too, and some of them are very good and some of them probably not so good.

All right. Can I go to this though: is it of some significance that a doctor works and does further training in a system such as the UK or the United States?-- For the purpose of determining a person's suitability we'd regard - and really it's fairly subjective. We'd regard very highly a person who has practised successfully in an equivalent jurisdiction.

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And you'd regard UK and US as two examples of an equivalent system to the Australian system?-- Yes.

The most outstanding perhaps being New Zealand?-- New Zealand would probably be the closest in equivalence. South Africa, even though that's changing possibly, but Ireland - they're all very equivalent.

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Okay?-- English speaking, and they have equivalent systems.

Thank you. And that would be one aspect, wouldn't it, that if the doctor has worked for some years in an English speaking country, then the issue of ability with language would be perhaps a factor of less concern?-- Well, certainly that's true, but in 2003 we didn't have an English language policy which we do now, so everybody, irrespective of where they've worked, would have to show evidence of English language proficiency.

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That's another development since 2003?-- That's right. That came in last year, in May.

In May 2004?-- 2004.

Thank you.

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COMMISSIONER: Mr Demy-Geroe, do you have any statistics as to the countries from which applications are received? Are you able to provide us with a breakdown of where we get most of the applications from?-- We could probably obtain - probably develop statistics - we don't keep them - on the origin of the degree on which the application is based, but where the person actually came from, no, we wouldn't keep statistics like that.

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I wonder whether I might ask you to do that - obviously not now, just at your convenience, and inquiry staff will be in touch with you to-----?-- The Australian Medical Council has statistics on all the origins of country of where the people who do the UMC exams, where they've come from originally.

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That could also be very useful. One of the things that's going through my mind - and I might be quite unfair about this - is that in one sense someone who has practised in the United States or the United Kingdom or New Zealand can perhaps be assumed to be more proficient in the English language and to be more experienced in a system compatible with our own, but I guess the other side of the coin is that if someone's choosing to leave the United States and come to Australia, you might just scratch your head and wonder what the incentive is, whether that person has a reason to wish to leave the United States, or not to continue practising there?-- That's absolutely correct, Commissioner.

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D COMMISSIONER VIDER: Mr Demy-Geroe, before 2003 are you saying that there was no English language proficiency testing of overseas applicants from non-English speaking countries?-- Seeking - no, there wasn't. There wasn't any formal assessment. There was an interview process in place at that time which has been discontinued at the end of last year. The interview was - one of the purposes of the interview was to assess whether a person had an adequate command of the English language. It was really too late because the registration would already have been approved at that time, and the Board recognised this eventually. Probably from the beginning of time with the Medical Board back in 1860 they'd been having interviews, and that was one of the things that the interview was supposed to determine if it was a foreign applicant, whether the person had sufficient English. We moved to an overall score of seven in the International English Language Testing System, and the level seven was felt to be sufficient to allow a person to practice the profession.
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COMMISSIONER: I think it's fair to say we've heard a story - and it may just be an urban myth, but one of the stories that was related to one of the Deputy Commissioners concerned an Area of Need doctor in Northern Queensland who was discovered after the event to be profoundly deaf, and that the doctor's only means of communication was by lipreading in the Farsi language. That may well be an urban myth, but there are certainly suggestions that over the years there have been language skill problems with a lot of doctors coming from overseas to Queensland?-- There were - and it was always anecdotal - stories around that there were such - certainly

not deaf. I think that is an urban myth, and I'd heard that story actually a year ago or two years ago. But we simply didn't have very many substantiated cases of doctors who couldn't communicate at all - or couldn't communicate to any acceptable level.

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I think those of us who have travelled overseas are aware that people from other English speaking countries sometimes have trouble with the Australian accent and vice versa. It strikes me that that can be very problematic with a doctor coming from overseas who might have practised, for example, in the United Kingdom or the United States, finds himself or herself in a remote part of Queensland, and really is entirely dependent on the patient's ability to convey symptoms and matters of that nature. Has any study been done to ensure that the current testing process, the level seven in the international standard, is really appropriate for conditions in Australian - particularly Queensland regional hospitals?-- No, I'm not aware of any such studies. The level seven was an overall score that we adopted, and it allowed for any component to be as low as 6.5. That was subsequently adopted nationally and has been reconsidered, and it requires now a level of seven in any component - not now, sorry, that's going to be introduced in July. It's been accepted nationally and it will be introduced. But to answer your question, no, I'm not aware of any studies that demonstrate that that's the acceptable level to enable professional practise.

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Thank you.

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D COMMISSIONER VIDER: This English language proficiency that we're speaking about at the moment, prior to 2003 you said that was assessed in interview. Was that interview then as a result of a subjective approach to interview or was there a criteria used to assess the spoken language as well as the comprehension of English?-- It was ultimately recognised that the people conducting the interviews - that was mainly Board members and some assisting practitioners and medical superintendents - weren't in a position really to assess English language proficiency for any standard other than general communication. Certainly there was no formal, structured approach that would have determined whether a doctor had the level of proficiency needed for professional practise.

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COMMISSIONER: I think to be fair, Mr Demy-Geroe, I read in one of the attachments to your report - I think it's Attachment 28 - you make the point that these interviews were really a bit of a carryover from the old days and they were more get-to-know-you sessions or courtesy sessions rather than a genuine testing of the applicant, and I think you also make the point that they actually came after the applicant had been approved, so there was no capacity to reject the applicant as a result of such an interview in any event?-- Yes, I think it was more a time-honoured professional thing that used to happen. Probably it had happened for hundreds of years, even before registration, but - and I think Board members were quite attached to it, but with the number of registrants

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involved in any case it became quite a considerable workload, and when it was - when it became clear to them that it didn't really serve any purpose other than, as you say, a get-to-know-you session, it was dispensed with.

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One can imagine back in colonial times Dr Ballow going down to meet the ship and welcoming the new practitioner. It doesn't seem to have much role in today's society?-- Yes, absolutely.

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MR DEVLIN: In relation to attachment 28 to your statement that the chairman just drew your attention to, that was a submission that you authorised in July 2003 to the Medical Board about the interview system?-- I beg your pardon, which exhibit?

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Number 28 - attachment 28?-- The guidelines?

The document behind that is a paper that you prepared in July 2003 for the attention of the Board about the interview requirements - within the same attachment, behind the guidelines?-- I see. Interview requirements. Yes. I authorised that.

And you pointed out the things that you have just been speaking about that's become-----?-- Yes.

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-----like courtesy and not having as much usefulness as it otherwise did have years ago; is that correct?-- That's correct.

As to that interview, though, before July 2003, the interview requirement was there and is it true to say that, in fact, Dr Patel was interviewed by a member of the Medical Board?-- He was.

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Because it was then a requirement?-- That's correct.

We will come to that in a moment. Now, in relation to the English language international standard, which Ms Vider asked you about, was Queensland the first state to introduce that international standard within Australia?-- For English language?

Yes?-- Tasmania, I believe, had a standard - had a policy. I don't think it was as developed as ours was, but they certainly did have some policies. That was the only state that I'm aware of, though, that did have a policy.

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Very well?-- I think at the time I wasn't aware they had a policy and subsequently now have become aware.

Very well. Queensland applied a standard which was subsequently adopted nationwide; is that the position?-- That's correct.

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Now, back to your memorandum, then, I want to just take you to paragraph 2.3 before we move on to other substantive documents. You say that Dr Patel's application was submitted on his behalf by a reputable Sydney-based recruiting agency Wavelength Consulting Pty Ltd?-- Yes.

Tell us about the role of the consulting firms in this area of

recruitment, please. Firstly is it a relatively recent phenomenon?-- Yes. Well, probably recruiting agencies have been around for a long time, but they certainly became the principal means of people becoming registered in the area of need in particular. Probably six, seven years ago there would have been only a handful - only a couple - and now there's quite a number. There's new ones seem to come along quite regularly.

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So, before recruiting agencies became more prevalent, what was the means by which these applications came to the Medical Board then? Under the impetus of the sponsor, the person wishing to fill the area of need?-- Generally.

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Okay?-- The majority of doctors that were recruited for Area of Need positions were always generally - or largely destined for hospitals, and so it was Queensland Health that was the main recruiter, and they used - or had done for as long as I've been around - an organisation known as Slade - Slade Consulting - and Slade Consulting used to do an annual trip to the UK and recruit British doctors - British and Irish doctors - so it was a very simple process because they slotted straight into our system, they were new graduates, and they went to generally junior hospital positions in Queensland hospitals.

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Now, the net, as you say in your statement, has been cast wider in recent years to other smaller countries throughout the globe from which to gain some of these applicants for areas of need registration?-- That's correct.

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Are you able to say why that is from where you sit as the Registrar? You speak of UK-trained doctors and Irish-trained doctors in the past coming through that Slade organisation through Q Health. Are you able to say why the net has been cast wider in recent years?-- Well, I think, firstly, the workforce situation is a global one. Some countries produce too many doctors and others don't produce enough. Australia is one that, in my opinion, doesn't produce enough doctors and therefore it has a shortage.

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What about the international competition now?-- Well, that's - that's what arises. I mean, doctors will go to America, they will go to Canada, they will go to - I'm not sure which countries recruit or which countries take in, but British doctors have got better conditions, so they are not as keen to work with us as they used to be, and we need more.

Okay. Let's go to the documentation that Wavelength sent you. MDG12 - your attachment 12 then starts the file, if you turn to that. On the 17th of January 2003, having been received on the 20th of January by your office, Wavelength Consulting introduces Dr Jayant Patel for the position of Senior Medical Officer, Bundaberg Hospital. That's in the heading of the document, correct?-- Sorry, which document are you looking at?

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MDG12?-- Yes.

This is a letter from Wavelength to the Registrar?-- I see. The heading says "Senior Medical Officer", yes. 1

Yes. Commencing 1 April 2003 for 12 months under "Area of Need"; see that?-- Yes.

Well, now, the time frame of January 17 to a commencement date of 1 April 2003, is that, in any sense, unusually short - the time frame for commencement?-- From 20 January to 1 April? 10

Yes?-- No, that's adequate time.

Thank you. Then, under the list of documents, the following documentation is enclosed - and we will come to some of those in a moment. The second last one, "Certificate of Good Standing to follow"?-- Mmm.

So, it wasn't included in the first tranche of documents; is that the position? Is that what we are to understand?-- It is an incomplete application without the applicant's standing. 20

Is that unusual?-- It does happen.

It does happen. Right. So, of itself, not unusual at this point in the process?-- No.

Thank you. If we now go to MDG13, which is the first attachment then? Enclosed under Wavelength's letterhead is the letter dated 8 January 2003 to the Registrar of the Medical Board about Dr Patel from Dr Kees Nydam, Acting Director of Medical Services, Bundaberg Base Hospital, saying that Dr Patel has been offered the position of Senior Medical Officer in surgery at Bundaberg Base Hospital?-- Yes. 30

Is that right?-- Yes.

So, again, not unusual of itself?-- No, no.

Thank you. Next, then, is the Application For Registration, including Special Purpose Registration Number 14. First of all, if we see the front of it, that's your standard application, marked as having been received with the Wavelength letter on the 20th of January 2003; is that correct?-- That's correct. 40

And if we go over the page then, we see that the applicant is Jayant Patel, and then we go down to the bottom of the page and we see that his last employment is at Kaiser Permanente in Portland, Oregon, October 1989 to September 2002, just a few months before January 2003?-- Yes, that's correct. 50

So, of itself, nothing remarkable in that?-- No, no, it is not an unusual period of absence from practice.

Thank you. I want you to turn the page then and go to-----

COMMISSIONER: Sorry, Mr Devlin, might I just ask: is there

or has there ever been a practice of contacting previous employers to ascertain the applicant doctor's employment history?-- No, we have relied on the Certificate of Good Standing and the history that the doctor gives us.

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That's really the next page, which I assume Mr Devlin was just about to take you to, where there's a list of questions, including the question whether the applicant has ever had "the registration affected by an undertaking, the imposition of a condition, suspension or cancellation, or in any other way?"?-- Yes.

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Thank you.

MR DEVLIN: So, going to clause 3 then, which asks the practitioner to answer this question: "Have you been registered under a corresponding law applying in a foreign country and the registration was affected either by an undertaking, the imposition of a condition, suspension or cancellation or in any other way?", and the box "no" is crossed?-- That's correct.

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And we now know that that is a false answer apparently made by the applicant?-- Clearly false.

Clearly false. Thank you.

COMMISSIONER: Mr Demy-Geroe, are you able to help us by drawing our attention to any statutory provision which would make it a criminal offence for Dr Patel to give that false answer?-- I believe there's an offence for giving false information to the Board. It is an offence against the act. I don't believe it is a criminal offence. I'm not aware of any other legislation which might impact on that.

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Do you happen to know off the top of your head what the penalty-----?-- At the moment, I think it is 3,750 in penalty units, whatever that is.

MR DEVLIN: I will have a look at the other criminal aspect, too, commissioner.

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COMMISSIONER: I'd appreciate that.

MR DEVLIN: At the end of the document then, just above the signature of the applicant on the fourth page, I think it is, we see not only that there are consents for the Medical Board of Queensland to make further inquiries, but then a declaration that the above statements are true and correct?-- Yes.

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Thank you.

COMMISSIONER: There are also on that page names and addresses of two referees. Is it the practice to seek references from such referees?-- Not as a matter of course. It could be that if an issue arose, that might be pursued, but it is certainly not as a matter of course with the numbers of registrations

that we are dealing with.

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To your knowledge has contact ever been made with the two doctors identified as referees on that page?-- No.

MR DEVLIN: Now, are you saying that it is not the function of the people who assist you to contact these people, or is it your expectation that others would have contacted those people?-- No, no, these referees are nominated in case we need to contact them. It is certainly not routinely done.

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And when would the circumstance arise for the contacting of a referee?-- If there were any doubts about a person's fitness to practise, I should imagine.

Those doubts, having arisen by other features of the paperwork, perhaps?-- Yes, or perhaps a report from - sent from another quarter or-----

Thank you. In your experience since 1988, how often has it been necessary to contact referees, or can't you say?-- I can't say. I can't immediately recall.

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Thank you. It is obviously not routinely done?-- No, certainly not.

Thank you. Now, by the way, back in this area 2003, how many such applications - or how many applications for registration generally did your section handle in a year? Can you give an approximate figure?-- How many applications?

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Mmm?-- Probably about 1200 or so.

Thank you. Now, let's go to the next series of documents at MDG15. You probably don't need to see these, but they are the various certificates showing the qualifications that you referred to in your memorandum which was later tabled in Parliament; is that correct?-- That's correct.

COMMISSIONER: Do you have any knowledge of the university - what's it called - Saurashtra?-- No. I have never come across that one, actually. There are universities or medical schools in India that we come across frequently - Hyderabad, Madras, Delhi, Bombay. There's a few of them - Calcutta even. There's a few of them we come across frequently and there are others that are infrequent, and Saurashtra, I must say, I haven't come across before.

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Has it been the practice to check the credentials?-- We would check that the university is listed in what - what we used to use was the listing by the World Health Organisation. We would refer to that and if it is a medical school - obviously if it is an unusual medical school, we might look at the application a bit more closely and the CV, and so on, but in this case there was a long practice history in America which tended to remove that doubt.

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I think it was Dr Miach who mentioned to us last week - it

might have been on Wednesday - but he is aware that there are parts of the world where it is possible to purchase a medical degree with no - or very limited medical training. I think he referred to some of the countries of eastern or south-eastern Asia?-- Yes, I read that.

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Have you come across that in your experience?-- No, I have never come across an actual forged medical degree. People have, on occasions, attempted to represent themselves as something they are not, but not by use of an actual forged medical degree we have uncovered, and I don't believe that's been the case.

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I'm not sure Dr Miach was talking about forgeries of medical degrees, rather he was talking about institutions which-----?-- Didn't exist.

-----provide degrees to people who haven't satisfied what would be regarded, at least in Australia, as acceptable academic standards?-- I'm not aware of anything like that.

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Thank you.

D COMMISSIONER VIDER: Mr Demy-Geroe, does the registrations committee - advisory committee - have any process for determining equivalents at primary degree level? Have you done any sort of international mapping exercise-----?-- No.

You haven't?-- The Australian Medical Council has a responsibility for accrediting institutions but it only accredits Australian and New Zealand ones and the reasons for that are obvious: it is simply there are so many medical schools, where do you start? So, it has not been done and the Board certainly doesn't have the provisions to do that or the expertise.

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COMMISSIONER: You did mention World Health Organisation listings. Is that a listing of medical schools accredited by the WHO?-- No, they are not accredited, and I think the publication has actually been discontinued. The World Health Organisation compiled that list from surveys of medical schools, and so it - there could be inaccuracies, because every medical school will tell you they are the best, or - so, I mean, the level of scholarship that went into it is probably a little bit doubtful and it basically served as a reference of existing medical schools that the World Health Organisation acknowledged.

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MR DEVLIN: Thank you. Just looking at MDG15, one of the documents here, we are looking at the Bachelor's degree. We will slide it down at the bottom. You referred to the fact that Dr Patel had been practising in the United States of America. That stamp at the bottom of the Bachelor's degree appears to be a stamp applied by someone in authority in the United States?-- You mean the certification by the Notary Public that-----

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Yes?-- That would be equivalent to a JP certification here.

Is it that kind of notification - sorry, that kind of addition to the document which tends to at least confirm the veracity of the documentation that you are seeing?-- Yes.

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That somebody in authority somewhere else has seen it and acknowledged it?-- Yes.

Very well.

COMMISSIONER: All that really tells us, though, is that the Notary Public has seen the original of the document and that this is a true copy of the original?-- Yes.

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It doesn't tell you anything about the actual authenticity of the original document?-- No, it doesn't.

MR DEVLIN: I just ask if my learned junior can approach the machinery here, Mr Commissioner?

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COMMISSIONER: Of course, yes.

MR DEVLIN: We go now next to the list of attachments, MDG16, and we see another attachment to the Wavelength Consulting introduction of Dr Patel being the area of need position description. If we can see the title of it, please? "Area of Need Position Description", and this is the Form 1. Who puts out these forms, Mr Demy-Geroe?-- We - the Board issues them. They are - they can be downloaded from our website.

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We see it is for the position of Senior Medical Officer, correct?-- That's correct.

And then we see the job description written in further down the document?-- That's right.

And that is, "To provide in-patient/out-patient surgical services to clients in Bundaberg and surrounding areas, to perform surgical procedures, operations for trauma presentations, emergency procedures and elective surgery, et cetera, including providing guidance and education to RMOs and students."?-- That's true, yes.

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Quite a typical position for an overseas-trained doctor to be an applicant for and to be a match for?-- A person with Dr Patel's qualifications, that would be perfectly reasonable.

Very well.

COMMISSIONER: This is not - the description provided here is not appropriate for a specialist position, is it? It is merely a Senior Medical Officer?-- The position is described as a "Senior Medical Officer", and the duties or the role of a Senior Medical Officer in surgery could be equivalent to a specialist, but one would expect that there's a level of supervision, whereas a specialist would be able to act independently.

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That raises a concern that I had. Did it appear anywhere in the documentation received by the Medical Board that Dr Patel was to be appointed directly to the position of Director of Surgery rather than practising under supervision as you might have anticipated?-- At the time when he was first registered, he was registered as a Senior Medical Officer in surgery. At that time, the Board accepted that a person can be promoted within the hospital.

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Yes?-- And he was promoted to Director of Surgery.

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Yes. What I'm wondering, though, is whether the Board was ever told by the people at Bundaberg Hospital or by Queensland Health that, "Even though we are applying for registration of this man as a Senior Medical Officer, in fact it is our intention that he will go immediately to the position of Director of Surgery."?-- No, no, absolutely not.

Would that have been a matter of concern if the Board had been told that?-- I - the Board wouldn't have accepted him as a specialist surgeon unless it had gone through an area of the specialist assessment process which is conducted through the Australian Medical Council and College, but that wasn't - that wasn't suggested, and certainly would have been of concern if the Board was aware that he was being represented as a specialist surgeon.

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You see, as I understand it - and I guess we are not here to debate legal matters - but as I understand it, it is illegal in Queensland for a doctor to describe himself or herself in the language of a specialist position unless they are registered with the Medical Board as a specialist?-- Yes, that's correct.

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And Dr Patel certainly wasn't registered as a specialist?-- Never.

And it would follow from that that if, for example, Dr Patel set up rooms on Wickham Terrace, "Dr J Patel, Surgeon", he would be committing a criminal offence?-- An offence against the-----

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An offence under the legislation?-- Under the act.

And my suspicion - perhaps you are not able to comment on this - but my suspicion is that the people at the hospital would also be committing a similar breach of the legislation if they described Dr Patel as a surgeon to their patients?-- Absolutely, and I believe the penalty for people holding the doctor out is significantly higher than the doctor holding himself out.

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Right. See, I know we will be coming to this later, but there's also the case of the psychiatrist at Cairns and subsequently at Nambour who wasn't, in fact, registered as a specialist psychiatrist, Dr Muir?-- He was. He was registered as a specialist.

Initially?-- Initially.

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I see, okay. So, he put in a different form of application to the one we see in front of us?-- It was different. He was entitled to general registration. I think he was a New Zealand graduate and he had the - he had an acceptable specialist qualification.

Right. Had Dr Patel sought registration as a surgeon, what extra processes would he have had to go through?-- He would have had to have the support of the College, and perhaps I can't comment on his motives, but the suspicion is that he may have felt that he would be uncovered if he went through for assessment by the College.

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Is it common for applications to be made by doctors who are to be employed in Queensland Health Hospitals describing them as, for example, Senior Medical Officer when it is intended that the doctor, will, in fact, immediately take up the position of a Director of a particular unit, whether it is surgery or orthopaedics or gynaecology or whatever?-- It does occur. No, they wouldn't be described as SMO. If that was the case, they might be promoted to that position, but I'm not aware that people - that there have been too many instances or any instances at all of an area of need doctor being recruited to fill a position as a director of a specialty field.

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Yet that seems to be what happened with Dr Patel?-- Mmm. There's certainly other special purpose registrants who are directors of orthopaedics, I think, in Toowoomba and various departments. That does occur. It is something the Board has been a little bit uncomfortable about, but the issue has been - is being represented as a specialist, and if that was clearly the case, the Board accepted it - perhaps grudgingly - but they felt that within Queensland Health, within the hospital, there should be adequate supervision and adequate capacity to assess the competency of the person for a particular task.

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I want to be quite clear about this: you say there are other instances you know of where someone has been recruited for a special need position and immediately appointed to a directorship?-- Right. I don't know about immediately. I know that there are - and I would have to research what the background was in the individual cases, but I know that there are special purpose registrants who are directors of - or have been directors of areas such as orthopaedics or surgery.

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Who have been promoted to that position after some time?-- I would think they have been promoted to that position.

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Yes.

D COMMISSIONER VIDER: Does the Board require notification when a change of classification does occur?-- Yes. Well, the special registration would have to be renewed annually and the area of need would have to be described in the Area of Need Certification.

And that would suffice? You don't require to be notified at the time of the intended change of classification?-- I don't know at what particular point in time Dr Patel became Director of Surgery. From the papers, it appears that he was the Director of Surgery at the time when his contract was renewed in the second 12 months.

COMMISSIONER: You mean from the papers before the Board, not the newspapers?-- No, no, from the papers before the Board.

MR DEVLIN: So, in that connection, then, we are jumping ahead in the time frame a bit, but in that connection, the Board, on renewal after the first 12 month period, was advised that Dr Patel had been promoted to Director of Surgery, correct?-- Yes.

And attached to that advice was a certification from a senior medical officer within - I don't use that term as a term of art - but a senior person within the hospital system that Dr Patel's performance had been commensurate with that position?-- Yes, there should have been a performance report.

Okay. I think we'll ultimately see a certification by Dr Darren Keating to that effect, but that's in the renewal, correct?-- Yes.

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After the 12 month period, correct?-- Yes. I am not - I am not certain when the performance reports were introduced.

All right. We'll come to the documentation in a minute but what I was trying to get at now in connection with the matters the Commissioners were asking you about is that later there was advice about the specialty position, as it were, now being one occupied by Dr Patel?-- That's right.

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Correct? Is that right?-- Yes, that's correct.

Now, is that unusual, in your experience, to be, after the practitioner - to take up what the Chairman was asking you, after the overseas practitioner has been in a position - a more junior position for a period of time, it appears from the paperwork that that practitioner is adjudged to be worthy of the more responsible status?-- Yes, yes.

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That's something that happens routinely, does it-----?-- Yes.

-----in your experience?-- From junior house officer to senior house officer, that sort of thing happens routinely. Sometimes it is higher levels. Sometimes they move from SHO to PHO, something like that.

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We will return to that when we get to that document.

COMMISSIONER: Well, I am sorry, I just want to ask something else in relation to that. I have just noticed exhibit 18 or attachment 18 to your statement. I wonder if that could be put on the screen. This is a document sent to you by Queensland Health outlining the position description that Dr Patel was going to fill?-- Yes.

And I notice at the foot of page 1, if we can move it up just a little, thank you - yes, it has just been highlighted that the senior medical officer in surgery reports directly to the Director of Surgery, so certainly the Medical Board was given to understand that Dr Patel would be reporting to a more senior person in the surgical department?-- Yes, yes.

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Thank you, Mr Devlin.

MR DEVLIN: Thank you. If we now look at - just go back one document from that position description, for Dr Patel's original position we then see a form 2 - if you go to the top of the page, please, Mr Henderson - "Summary of experience suitable to the Area of Need". So this document is a form 2 of the official form submitted to you by Wavelength and it appears to be filled out by the applicant himself?-- Yes, it does appear.

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If we go down to the body of the document then, he matches -

this is the process, is it - he matches what he is good at with what the position requires on the form 1. Is that a fair comment?-- That's correct. That's the purpose of those forms.

1

And your process is to see if it is really a match?-- Between - this is one way, and we look at generally the professional history of the person.

And if you at assessment level have any concerns about it being a match, do you raise it with the Registration Advisory Committee members?-- Yes, we would.

10

For them to more specifically consider the match, is that a fair comment?-- Yes, yes.

Thank you. So here Dr Patel appears to have said, in answer to the surgical requirements of the position, that he had post graduate training in India and the US between '73 and '84, a general surgery practice in Buffalo, New York State, 1984 to '89 - is that correct so far?-- That matches what was in the document.

20

That matches the paperwork, is that right?-- Yes.

General surgery practice as a Clinical Associate Professor at Portland Oregon from '89 to 2002, including all aspects of general surgery, et cetera. So he signs off on that as being his attempt to match his skills to the position on offer?-- Yes.

30

Thank you. And that came to you from Wavelength, correct?-- Through Wavelength, yes.

Now, MDG19 then - we can skip the position description - MDG19 is a lengthy CV, all typed up, submitted to you on behalf of Patel by Wavelength. If we can just see the heading. And that runs to some six pages, correct?-- Yes.

If we just quickly go through that, apart from "education standard" then down the page "positions held", which we have been through a few times, over the page we have "Professional organisation and committee membership details", correct?-- Yes.

40

Down the bottom of the page "awards". Over the next page "Qualifications, educational, academic and administrative"?-- Yes.

Next page "publications", a full page of publications in which he has collaborated with other professionals, at least on the face of it?-- Yes, yes.

50

Thank you. Then over the next page, "Chapters and presentations", presumably to medical conferences and the like?-- Yes.

Correct?-- Yes.

And that runs over to the sixth and last page of the document. So on paper he is an impressive applicant?-- He looks good.

1

The trouble is he told lies to the Medical Board?-- That's correct.

Thank you.

COMMISSIONER: Mr Devlin, would that be a convenient time to take the morning break? We will adjourn for 20 minutes.

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THE COMMISSION ADJOURNED AT 11.05 A.M.

THE COMMISSION RESUMED AT 11.30 A.M.

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MICHAEL STEVEN DEMY-GEROE, CONTINUING EXAMINATION-IN-CHIEF:

COMMISSIONER: Just before you continue, if I may, Mr Devlin, just thinking over the break about some of the things we were discussing earlier, am I right in understanding that under the legislation the Medical Board can impose conditions on a doctor who is granted a certificate to practise in Queensland?-- Well, yes, it has in general, but specifically for Special Purpose Registration, yes, it does. Those conditions have to be to ensure competence and safety.

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Just thinking back to the fact that Dr Patel's application was as a senior medical officer in surgery rather than as a Director of Surgery, had the Medical Board been informed that Dr Patel was going to take, in effect, the top position in surgery at Bundaberg, are you able to say, from your experience, whether it is likely that the Medical Board would have imposed some conditions, such as supervision or regular reporting, or something of that nature?-- There was an expectation that he should have been supervised as an SMO, and that was certainly indicated in the position description. If there had been any doubt about it, I think the Board would have put that condition on him.

40

Right. The other thing that I touched on with you earlier was the use of a title implying specialist registration, such as the description "surgeon" or "general surgeon". Does the Medical Board itself handle prosecutions for cases where people misrepresent their professional standing?-- Yes.

50

There have been cases in Queensland of, for example, general practitioners who hold themselves out as having specialist qualifications when they don't have those qualifications?-- Yes. Usually if - it is a bit of a boundary issue where

somebody just goes a little bit further with their claims to expertise than in fact is the case, but a warning is sufficient. But there have been prosecutions.

1

Have there been any prosecutions to your knowledge arising out of situations where a Queensland Health hospital holds a doctor out as having a specialist qualification which the doctor does not in fact possess?-- No.

Do you know if there had been any investigations to matters of that nature?-- No, there haven't.

10

Apart from Dr Patel in Bundaberg, with senior - we've seen the report in relation to the orthopaedic department at Hervey Bay, and there was at least the suggestion in that report that people were holding themselves out as qualified orthopaedic surgeons when they weren't. Is that the sort of thing that the Medical-----?-- That's right, it has been a concern that that might be happening in hospitals. There has been nothing substantive that's really come to the Board in that respect, though. Clearly a person who is filling a position within a surgical area might be able to be represented, even unknowingly by staff, as a specialist, or people might be being referred to a specialty clinic and being seen by a non-specialist. It probably happens but we've never had any specific information.

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Thank you, Mr Devlin.

MR DEVLIN: Thank you, Mr Commissioner. I want to take you now to your attachment 22, which is on the screen. This is a communication from Wavelength Consulting to one of your staff members dated the 21st of January 2003, so a day after Dr Patel's application documents were stamped, and also stamped 21st January, "Dear Ainslie, I have lodged an application for the abovenamed doctor which you should have received this week. This does not include a letter of good standing. Attached is a faxed copy of the document and I hope to receive the original by January 29 for inclusion at the February 11th Medical Board meeting. It is currently en route from the US." Is that a standard type communication in registration matters? The certificate of good standing follows up the application?-- That seems reasonable. It doesn't seem unusual in any particular way.

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Thank you.

COMMISSIONER: Although I think you have already indicated that in future the Board's policy will be to obtain these certificates directly from the relevant overseas authority, rather than-----?-- That's correct. At the time this would have been not unusual.

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MR DEVLIN: Thank you. Now, you will need to keep your voice up, please. I have had reports from the public gallery that you are hard to hear, so please keep your voice up. Now, in relation to the attachment then, if we could go to that document? This is the - under the seal of the Board of

Medical Examiners for the State of Oregon, we see a couple of entries of importance in respect of the certificate of good standing. Firstly, under the heading "standing" there are the words "Public order on file - see attached". There is no attachment, correct?-- There was no attachment. 1

Tell us about the forms in which certificates of good standing are received from around the world, please?-- Well, certainly in the British world, the old British world, English speaking world apart from the Americas, certificates of good standing followed a fairly familiar format. It would start off with a certification of a person is registered and then there would be a further certification. 10

If, for instance, there were conditions of practice imposed in the other jurisdiction, would you see that on the face of the document?-- If there were fundamental just straightforward conditions, that should be in the body of the document. It would tell you that limitations are - this person is conditioned to practise only in the field of orthopaedic surgery, for example, or can't - is restricted to practising in a public hospital. Whatever the type of limitation there is, if it is a straightforward limitation that wouldn't be of particular concern. 20

You acknowledge in your material that the original assessor should have been put on inquiry. You do acknowledge that, don't you, the person who assessed these documents under your command ought to have been put on inquiry by that entry, the entry "see attached"?-- That should have prompted some concerns and that should have been pursued. 30

Have a look, though, at the next couple of entries under the word "Specialty", we have got "limitations - none; extensions - none." Now, I just want your comment on this: in your experience of looking at these certifications of good standing, does that tend to send a conflicting message?-- Yes, it does. I mean, firstly the standing - the description "standing - public order on file", without the further comment "see attached", public order on file is really quite meaningless, in our experience. Could mean any number of things. If it does relate to a person's disciplinary situation in that jurisdiction, then the limitation, as you have observed, would appear to be conflicting with that. 40

Some might say, however, that surely your staff and yourself have seen plenty of examples of certificates of good standing coming from the United States State jurisdictions?-- We have seen many and as a result of this we have examined many more, and this is fairly typical. 50

Fairly typical-----?-- Fairly typical.

-----did you say? Okay. And you nevertheless frankly acknowledge that the assessor ought to have picked up the words "see attached" and inquired further?-- Yes.

Thank you.

1
COMMISSIONER: Would you also have expected any problems to be brought to your attention, either by the head-hunting firm that was presenting Dr Patel for registration or by Queensland Health as the potential employer?-- I doubt the Queensland Health would have seen this verification document. The recruiting company, I think, should have noted it, too, but they clearly missed it as well.

That's not to pass the blame to someone else?-- Mmm.

10
But it is another safeguard you would have expected to take effect?-- Yes, from the recruiting agency, but not have Queensland Health. They wouldn't have seen this.

Do you think they should - do you think they should be brought into the loop, as it were?-- It would do no harm.

Yes.

20
MR DEVLIN: Now, just quickly to then exhibit 23, if you would turn to that? This document from Wavelength suggests that the original outstanding documentation, that is the certificate of good standing, was received in your office on the 29th of January 2003, just before the Board meeting?-- Yes.

Do you accept that?-- Yes.

30
Thank you. Now we go to Exhibit 24 which is the checklist which the assessor - my word - applies. If we can just see the heading first, please, Mr Henderson? This is an official document of the Medical Board of Queensland, is it?-- Yes, it is, yes. That's our checklist.

And it is used for the assistance of the assessors who answer to you, correct?-- It is completed by them and ultimately it goes to the Registration Advisory Committee.

The Registration Advisory Committee?-- Mmm.

40
As to certificate of good standing, which is two up from the bottom of the screen at this stage, the assessor has obviously given it a tick?-- Yes, yeah.

And wrongly so?-- It was - it was obviously accepted by that person that the certificate of good standing was a valid document, a suitable document.

50
Thank you. Now, go down, though, to some handwriting in the box "comments". The comments say this: "Dr Patel is seeking Special Purpose Registration under section 135 to fill an Area of Need at Bundaberg Base Hospital." But there is some handwriting over in the right-hand side. Whose is that?-- That's my writing.

What have you written?-- "As SMO surgery".

Did you write that prior to this document going to the

Registration Advisory Committee?-- I believe I wrote that at the Registration Advisory Committee meeting.

1

So does that indicate that Dr Patel's registration was specifically considered by the committee?-- Yes, oh, yes.

And you have gone to the trouble of pointing out that it is for an SMO position?-- Yes, yes. With the qualifications that Dr Patel was presenting, being specialist qualifications, it was good practice, I think, to make it clear that he was an SMO, not a specialist.

10

Very well. And whilst on that document, the administrative officer is named as Ainslie. Has that person since left the employ of the Medical Board of Queensland for reasons unconnected with this incident?-- Yes. She left - she had an offer of another position last November, I believe, and she left to pursue that. She-----

In terms of the experience and efficiency of that particular person in amongst your staff, how did she rate?-- She was the most experienced and most reliable. She acted as Assistant Registrar when the opportunity arose and she was an efficient, focussed person.

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Mr Chairman, can I indicate that my instructing solicitors have spoken to the lady and she advises firstly she has no independent recollection of doing the particular matter but she stands ready to give evidence if necessary.

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COMMISSIONER: I will be guided by your views and those of the other counsel representing the various parties. This process isn't about embarrassing people unnecessarily. It is obvious a mistake was made and I think the important thing is, as a spokesman for the organisation, Mr Demy-Geroe has very properly acknowledged a mistake was made, and one would hope that that goes some way to providing comfort and closure to some of the people who have been affected by Dr Patel's registration. And I may say on behalf of the Commission of Inquiry we certainly appreciate your frankness and candour in the way you have dealt with this difficult issue.

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MR BODDICE: Thank you, Chairman. If we can go now to exhibit 25, the Registration Advisory Committee report. I just want to go to one aspect of that. Firstly, on the covering sheet we see that the Board members who attended this particular meeting of the 3rd of February, bearing in mind that the Board meeting was scheduled for the 11th of February, correct?-- Yes, that would seem to be a mistake.

50

Thank you. We have Dr Mary Mahoney, who is the Chairman of the RAC, correct?-- Yes.

Chairperson, a Mr Clare and Dr Toft, who was then the Chairman of the Medical Board, correct?-- He was the President, actually.

President, sorry. President of the Medical Board?-- Medical

Board, that's correct.

1

Dr Mahoney being a fairly senior member of the Board?-- There is no ranking in seniority. She was certainly an experienced Board member.

Very well. Both yourself and your assistant, Robyn Scholl were present?-- That's correct.

Now, if we go over to the next page for the entry involving Dr Patel.

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COMMISSIONER: Sorry, Mr Devlin. Is Mr Clare a lay observer? What's his role?-- He is a consumer representative.

All right. Just so I understand it entirely, this advisory committee, this is like a subcommittee of the entire Medical Board?-- Yes.

So the advisory committee meets first to check the applications for registration, to identify any that are problematic and then the whole lot ultimately go before the Board for approval?-- Well, all these recommendations just go to the Board meeting in the following week.

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Thank you.

MR BODDICE: Now, the documentation on the next page, specifically in relation to Dr Patel, relates the nature of the Area of Need vacancy and then the recommendation. Specifically the nature of the vacancy is now described as an SMO in surgery. So your notation going into - or made at the meeting, to the best of your recollection, actually now gets reflected in the official documentation?-- Yes, it was picked up to become part of the recommendation.

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Yes. So the recitation might have been a little bit deficient going into the meeting but the process picked that up?-- That's right.

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Thank you. And then the recommendation also picks up the specific nature of the position, correct?-- Yes.

Thank you. We will move on. Finally for completeness, exhibit 26 shows the resolution of the Medical Board itself on the 11th of February 2003 resolved that Dr Patel be approved Special Purpose Registration under section 135 to fill an Area of Need as an SMO in surgery at Bundaberg Base Hospital, correct?-- Yes.

50

Thank you. Now, I think you have already agreed that Dr Patel was in fact interviewed before he took up his position, and are applicants routinely written to, or were they written to about the interview, to attend an interview, is that right?-- There was - no, I am not sure if that was always the case.

Sorry, go to 27?-- Yes.

So there we have a letter dated 12th February saying that the one thing for completion of registration requirements was interview with a Board member?-- Mmm.

1

And then third paragraph, "Registration is contingent upon you practising as a senior medical officer in surgery", et cetera, is that right?-- That's right.

Then he is required by the fourth paragraph to commence practice within six months or the application would lapse?-- That's - that's what we generally advised.

10

All standard positions, correct?-- Yes.

Sorry, all standard provisions?-- Standard practice.

Thank you. Now, if we go to 29, there is even a report back from Dr John Waller a member of the Medical Board that he interviewed Dr Patel on the 31st of March 2003. If we go down a bit we will see the certification by Dr Waller. That's it there. That he had duly applied to the Board for registration, has complied with the relevant Act and "possesses such qualifications as would, upon proof thereof satisfaction of the Board" - that should be "to the satisfaction of the Board, entitle him or her to be registered"?-- Yes.

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That's proof that in fact that interview was conducted, correct?-- Yes, and that the interviewer was satisfied with the person's fitness to practise generally.

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But that's against the qualifications, which you frankly expressed in a paper to the Board in July 2003 that events have really outstripped the interview process?-- That's correct.

Thank you. Now, if we could go to Exhibit 30? On the 1st of April Dr Patel was routinely written to setting out these things in particular: at the third paragraph in bold, "It is advised that you are not registered as a specialist." Now, is that included in communications to registrants in every case, or is there a particular form of letter for people who have claimed a specialty elsewhere, or can't you say?-- I can't say whether it is always in letters. I do know how that originated. It was in response to a fear that people might be being - particularly if they had specialist qualifications might be being represented as specialists. So I think - yes, we put it in bold and we hoped that it would put off any temptation to represent a person as a specialist.

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Is that against that background of general concern that you spoke about to the Chairman earlier, that the Board had but without any proof?-- Yes.

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Thank you.

COMMISSIONER: Sorry, Mr Devlin. Mr Demy-Geroe, going - we looked earlier - there is no need to bring it up - but we

looked earlier at the Board's actual resolution which stipulated that Dr Patel be approved for Special Purpose Registration to fill an Area of Need as an SMO in surgery?-- Yes.

1

Then we had this letter on 1st of April that's in front of us, and after the words in bold that you have just been taken to it continues: "Any variation to your practice would require further approval by the Board."?-- Yes.

10

Would that include a promotion from the position of SMO in surgery to the position of Director of Surgery?-- I think so, yes.

Obviously that was not notified to the Board until the time came for the registration to be renewed 12 months later?-- I am not aware when Dr Patel was actually promoted.

Yes. But you didn't hear about the promotion?-- No, no.

20

Until the renewal of his registration in I think December or thereabouts 2003?-- 2003.

Yes?-- 2004.

MR DEVLIN: Thank you. Now, go to paragraph 4 of the letter dated 1 April 2003 to Dr Patel. The Board advises him: "While registration in this capacity is approved by the Board for an initial term of not more than 12 months, any further term of registration in relation to the above activity would be dependent upon the Board remaining satisfied that you are suitably qualified and experienced to fill the vacancy."?-- Yes.

30

Down at the bottom of the page and going over to the next page the Board pointed out to Dr Patel that "The Act provides for the cancellation of a Special Purpose Registration if the registrant" firstly, over the page, "practices the profession other than for the approved activity, is convicted of an indictable offence, or convicted of an offence against the Health Practitioners Professional Standards Act", correct?-- Yes.

40

Or last one, "Was registered because of a materially false or misleading representation or declaration"?-- Yes.

Thank you. Now, also was the registrant advised that pursuant to the Health Practitioners Professional Standards Act he was required to notify the Board, number 3, of "judgments which have been delivered and settlements of proceedings in a Court brought by another party against the registrant claiming damages or other compensation for alleged negligence", et cetera, and last one, "Registration, licence or certification held by the registrant under a corresponding law applying in another foreign country which has been affected by disciplinary action or has been otherwise cancelled, suspended or made subject to a condition or an undertaking"?-- Yes, that's the reporting requirements under the Professional

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Standards Act.

1

So this registrant, as all registrants do, received a fairly stern warning letter covering all aspects of possible non-disclosure or misconduct in the past?-- Yes.

I take it you heard nothing?-- No, I - I first heard about it when everyone else did, I think.

Now, quickly if we go to Exhibit 31 then. The first certification issued by the Medical Board then after all of that process was engaged in, is to practise as a senior medical officer in surgery at Bundaberg?-- Yes.

10

For the period 1 April '03 to 31 March '04?-- That's correct.

Thank you.

COMMISSIONER: Would copies of that go to the authorities at the Bundaberg Hospital? Should the medical superintendent or the-----?-- Yes, there was a cc copy went to the Medical Superintendent Bundaberg Base Hospital - of the letter not of the certificate itself.

20

All right. But the letter at least would go to the-----?-- The letter went to the medical super, yeah.

MR DEVLIN: Now, we won't go to Exhibit 32 but I would ask you to turn to it. On the 3rd of December 2003, was Dr Patel written to care of the Bundaberg Base Hospital reminding him that his first period of registration is due to expire on the 31st of March '04?-- That's standard. That's routine.

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Routine. So we've got - effectively he has got four months - best part of four months to get his act together and get a new application in?-- That's right.

As a matter of practicality, is it the hospital authorities who would tend to put that into action if they are going to retain the employee, or can't you say?-- I can't say for certain. I do believe it is the hospital that makes sure that these contract doctors remain registered if they want to offer them another contract.

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We might go-----

COMMISSIONER: Sorry again, Mr Devlin. Mr Demy-Geroe, I am sorry about this tag teaming but it is a lot easier to ask questions as the documents come up rather than waiting for the end?-- Certainly.

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I notice in that letter of 3rd of December the amount of the registration fee is mentioned. I think it is \$416. Am I right in thinking that the Medical Board is effectively self-funding?-- Yes, it is. It is completing self-funding.

Completely self-funding. So if it were determined at some stage that some of these procedures have to be tightened up

and that would require extra staff at the Medical Board, that wouldn't be a burden on the taxpayers of Queensland?-- It wouldn't be a burden on the taxpayers of Queensland. It would probably be a burden on the medical practitioners of Queensland.

1

At least those seeking registration or renewal of registration?-- Yes.

MR DEVLIN: Can we go to 33 now, which is the next one? Now, dated 1st December 2003, which is also the date of your reminder letter, we see a letter from the Bundaberg Health Service District in respect of Dr Patel advising that his contract had been extended to 31 March 2005. See that?-- Yes.

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If we go down a bit we look for the documents accompanying the letter and one, that is the fourth one, is headed "assessment". See that?-- Yes.

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Let's go to that document in the bundle. On the way through do we see a further application for registration in which Dr Patel again made the false declaration that he had no conditions imposed, or no suspensions or cancellations in a foreign country?-- This is the application form you are talking about.

Yes, the fresh application form?-- Yes, yes.

The extension?-- He made the same declaration.

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Made the same false declaration, right. Let's now go to the certification. If we can find it in the documents. We have assessment form for special purpose registrants, period of assessment being April to November 2003 and it is said that Dr Patel is now in the position of Director of Surgery?-- Yes.

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Now, if we go down to the various tables, we see ticks in two different columns, the left-hand column saying "consistent with level of experience", and the right-hand column saying "performance better than expected". Is that right?-- Yes.

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So this is the start of the assessment document by somebody who has been in a position to attest to his qualities in his first year - or at least 1 April to 1 December of that year?-- Yes.

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So in amongst those, clinical judgment, decision-making skills, clinical skills, emergency skills et cetera-----

COMMISSIONER: I thought "Teamwork - works and communicates effectively within a team" was perhaps the most interesting of those.

MR DEVLIN: That's the one at the bottom, Mr Chairman? Perhaps if we could just scroll down a little more, Mr Henderson. Yes. Now, if we go over the page we'll see the certification in words, apparently by Dr Keating, dated 2 December 2003. "Dr Patel effectively utilises his broad knowledge, skills and experience in general surgery to provide high quality of patient care. He is a willing and enthusiastic leader. He also brings understanding of clinical management subjects to appropriate forums. Areas for improvement: Dr Patel should continue to develop his understanding of the Australian/Queensland Health care systems and work towards implementing a formal approach to evaluation of the quality of surgical services provided at Bundaberg." Is that a typical, as it were, certification of a senior person in a position to comment upon Dr Patel's performance to that point?-- I think I should comment, they're not usually as flattering as that or as glowing as that. We usually deal with them - if they're on the left-hand side there's a problem, we start looking into it. If they're on the right-hand side they're okay, but his are consistently "performance better than expected".

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Does the Board as a matter of its ordinary day-to-day duties - your section of the Office, I should say - does it apply its mind to these renewals to make sure that the practitioner has settled in and is performing properly? In other words, do you take any notice of these assessments?-- Oh, absolutely. This is the key document for a further term of registration.

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The key document. Thank you.

COMMISSIONER: Mr Demy-Geroe - if that can be brought down the page a bit on the screen so that we can see the bottom section - we see there that Dr Keating has signed it in the capacity of clinical supervisor. What would your understanding be of the expression "clinical supervisor"?-- That his practice within the hospital is being supervised.

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But at a clinical level?-- At a clinical level.

There's someone else in the operating theatre or in the wards-----?-- I think I can only say that within the hierarchy of the hospital everyone except for the top person - even the top person reports to Brisbane - has somebody looking over them, and in Dr Patel's case, Dr Keating was his boss and should have been familiar with the level of his practice and his competency.

1

I just wonder why the word "supervisor" is qualified with the adjective "clinical". It sounds as if the Medical Board is looking for assurance that the person undertaking supervision is actually a clinician rather than in some other capacity?-- Oh yes, yes, that is why that's there. We've had these sort of performance reports completed by practice managers in medical centres and administrators within the hospital, and so certainly there was an expectation that the person providing the supervision is actually in a position to attest to their clinical competence.

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Thank you.

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D COMMISSIONER VIDER: Mr Demy-Geroe, what is the action that the Board takes then when a discrepancy appears or seems to be there between the person nominating themselves as a clinical supervisor - e.g. a practice manager - to determine who's conducted the assessment?-- We wouldn't accept a performance report from a practice manager, for example.

So where you've got this report signed off by a clinical supervisor from a person you know to be holding another position, do you do anything about that?-- I'm not sure I understand your question.

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COMMISSIONER: Perhaps if I can put it slightly differently. We've heard evidence from Dr Keating that in fact he performed no clinical duties whatever?-- Mmm.

But were you aware of that when you received this form?-- No, no. As I've said, the expectation was that he was receiving clinical supervision, oversight, whatever that took. I don't think it extended to - I can state it wouldn't have extended to Dr Keating attending with him at surgery and things like that, but he would have had to keep a close watch on - as he would for all of his staff.

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If, when this form came in, you had known that Dr Keating was not a clinician, that he was in a purely administrative role, would you have sent it back and asked for a report from someone in a clinical position?-- No, I don't think we would have thought along those lines. We would have expected that Dr Keating was capable of providing a clinical oversight, and that was the expectation.

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D COMMISSIONER VIDER: So there's no expectation or change to this format whereby the person that supplies this assessment is actually a clinical person who would be providing the supervision. What I'm looking at here, you'd have a clinician, a surgeon, who would be able to give an assessment

of a senior medical officer's surgical ability?-- Clearly it's desirable for the person to be in the same discipline and to be able to make judgments, as it were, on the person's competency and performance to that detail.

1

Is there any move to change this approach that you're aware of?-- No, no, not that I'm aware of.

COMMISSIONER: Do you think there should be?-- I can only say it would do no harm. It's within the - I think it is possible. We are requiring higher levels of supervision now. All Special Purpose Registrants are required to nominate a supervisor and that supervisor is looked at. It's certainly something we will be looking at.

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D COMMISSIONER VIDER: Thank you.

COMMISSIONER: Thank you.

MR DEVLIN: Just go back to the first page of the assessment form then and see that the position now as Director of Surgery - we've already seen that?-- Yes.

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Thank you. Could you now go to your Exhibit 34, the next exhibit. Am I right in understanding that the Board - sorry, your staff, in assessing the new application, would ordinarily pick up on the Director of Surgery change as opposed to the SMO? Because in this document the, registration checklist which we saw an example of earlier, this one being dated 15 December 2003, the Area of Need Certification remains "position of SMO at Bundaberg Health Service District". Do you see that in the middle of the page?-- Yes.

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Can you explain that for us?-- It's incorrect.

Would you ordinarily expect the designation of the position to change in response to the heading on the assessment form?-- It should have been changed. It should have - this form should have represented the registration dealing that was being presented to the Committee, and it appears that this is a reprint of the previous document.

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COMMISSIONER: It's actually a bit more complex than that though, because you had a certification in place certifying the position of SMO in Surgery at Bundaberg as an Area of Need. There was no certification for the position of Director of Surgery as an Area of Need?-- This isn't an Area of Need Certification.

Well, sorry, on your form which is Attachment 34, it refers to the fact that there is an Area of Need Certification in place?-- Yes.

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But in fact the Area of Need Certification in place was certification for an SMO position, not a Director of Surgery position?-- I had understood there was another Area of Need Certification for the different position.

All right. And that should have been picked up on this form?-- This form, I believe, doesn't represent the Area of Need Certification that was given for the continuing registration.

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It's just that, as Mr Devlin put it to you - and I'm sure it was an oversight - he said that when you fill in the Area of Need Certification on this form you'd simply take it from the previous document which we're looking at, which was the assessment form?-- No, I think the previous checklist-----

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MR DEVLIN: I can assist. I can assist. If you go back to the previous exhibit, please, and go to the last two or three pages of that exhibit - the last four in fact, do we see a fresh application for Area of Need Certification dated 21 November 2003?-- Yes.

Go to the second page of that. It does appear that the designation has changed - oh no, wait a minute. I'll rephrase that. It appears to be an amalgam, "Director of Surgery-SMO". So perhaps that's where the matter has just stayed the way it was for that reason?-- Yes. Director of Surgery would have been seen more as an administrative role rather than necessarily implying specialist status. That's how it could be interpreted.

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So is it fair to say, without being critical of anybody, is it fair to say - at least in my question - is it fair to say that the description then is a little bit unclear on the fresh certification?-- Yes.

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COMMISSIONER: Well, indeed the form contemplates a degree of transparency when it asks the person signing it to specify whether you're looking for a JHO, SHO, PHO, SMO or a specialist, and this is still being put on the footing that Dr Patel will merely be a senior medical officer - I don't mean "merely" in an offensive state, but as a status lower than that of a specialist?-- Yes.

MR DEVLIN: Thank you. And so, going back to 34 then, in allowing the registration checklist to go forward in this form, it appears that your assistant, Robyn Scholl, has been influenced - has read the document in a particular way to imply the continuation of the SMO position?-- Yes, yes, and she would have discussed that with the Committee and the Committee would have made their recommendation.

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Thank you. And also on the registration checklist there we see, "Certificate of Good Standing not applicable". So that particular issue's not revisited unless there's reason to, I take it?-- That's correct.

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On a renewal?-- That's correct.

Thank you. We see at number 35 a resolution of the Board dated 27 January 2004 that, "The Board resolves that it agrees with the decision of the authorised person, Dr Mahoney, being the chairperson of the Registration Advisory Committee, to

register Dr Patel for a further period." Is that right?--
Yes.

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Thank you?-- I don't know why there was a provisional registration given when the registration actually ran till 31 March, but anyway, that's what happened.

Yes, because he was already confirmed in the position until 31 March, was he? Would that be in view of the fact that the hospital advised you that he was employed to 31 March 2005?--
Sorry?

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Would that be because the hospital advised the Board that it had agreed to employ Dr Patel until 31 March 2005? Or are you simply pointing out that it's still within the 12 month period?-- His registration was already approved until 31 March, so there was no urgency in progressing this application, but I think what did happen was the whole of the recommendations from the Registration Advisory Committee at this particular time of the year were provisionally approved because there mightn't have been a Board meeting at the time. So it depends - I'd have to look at when Dr Mahoney made the decision. I think it would have been because of the Christmas/New Year break. They would have just all become provisionally approved by Dr Mahoney.

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COMMISSIONER: It occurred to me there might also be visa problems with Dr Patel having been in Australia for 12 months and he needed to renew his visa?-- That's a possibility too.

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MR DEVLIN: Let's go to 36 which picks up a slightly different wording which I'll just shade. The special purpose activity on the new certificate would take him up to 31 March 2005, is "to fill an Area of Need at Bundaberg or any other public hospital authorised by the medical superintendent on a temporary basis". It seems to be a bit different to the wording of the previous certificate?-- The previous certificate had that discretion for the medical superintendent omitted. I'd have to have a look at it.

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Is there any particular reason you can think of why the discretion of the medical superintendent suddenly appears there?-- I don't know why it should have suddenly appeared there. It's a fairly standard discretion that's been given to medical superintendents within the hospital where a Special Purpose Registrant has been placed.

Is this another aspect of Special Purpose Registration that Senior Medical Officers within Q Health do also have some discretion according to the certification-----?-- Yes.

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-----about where people are placed?-- Yes.

What the Board has to trust in is that there's no fully specialist activity going on if the person is not registered for that purpose?-- Yes, and also that they're satisfied the person is properly competent to fill the positions which are assigned to the registrant.

So you're reliant there upon the application of supervision and so on-----?-- Yes.

-----in the hospital setting by senior staff?-- Yes.

All right. Thank you. Now, number 37 then shows a similar letter going out to Dr Patel dated 9 March 2004, again advising him that he's not registered as a specialist, and down the bottom of the page, that there will be cancellation of that Special Purpose Registration in the event of conviction of an indictable offence et cetera, breaches of the Act. Correct?-- Yes.

And he should notify of any licence cancellations and so on, as we saw in the previous letter?-- Yes.

Thank you. If we go to 38, we see a letter under the hand of Dr Keating advising the Registrar of the Medical Board that the Bundaberg Health Service District has, on 31 January 2005, extended Dr Patel's contract to 31 March 2009. Is that right?-- Yes.

And if we go to certification-----

COMMISSIONER: Just dealing with that, Mr Devlin, I assume that the Medical Board ordinarily operates on the footing that whatever they're told by a Director of Medical Services at a hospital can be trusted to be entirely true?-- Oh, we'd regard a medical superintendent's word - a medical superintendent as having the highest integrity.

D COMMISSIONER VIDER: Mr Demy-Geroe, when the Board corresponds with an applicant who has been successful in gaining registration, with the information that goes out to them, do you attach a statement of definitions so that the applicant - now the person registered by the Medical Board of Queensland - understands themselves that the classification has a particular definition?-- No, we don't attach such a statement.

COMMISSIONER: Although I guess you'd say that the standard form letter that we were looking at before at item 37 - and there was a similar one earlier - is intended to achieve that purpose?-- I drafted that letter, and it was my intention to make it as clear as possible.

D COMMISSIONER VIDER: So that the person would clearly understand that as a Senior Medical Officer they are meant to be practising with supervision?-- Yes.

Thank you.

COMMISSIONER: It is troublesome, I'm sure you'd agree, that we have this attachment 38 asserting that the contract had been extended to 31 March 2009 when we now know that that's just untrue?-- Yes.

What attitude would the Board take where a falsity of that nature was brought to its attention?-- It's unexpected and unanticipated, and I imagine the Board would be very concerned.

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Yes, Mr Devlin?

MR DEVLIN: Thank you. If we go to the application for renewal then, the document accompanying the letter, we see it right at the bottom of the page. Again the false certification by the applicant that he has not been dealt with in another jurisdiction. See the boxes at the bottom with the cross against "no"?-- Yes, yes.

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So yet again the practitioner called upon to make a certification to Dr Patel has made a false one?-- Mmm hmm.

Then we need to go to the Form 1, which this time is typed, and apart from outlining the services provided as - sorry, we'll go to the top of the page. We can see it - Director of Surgery. So there's complete disclosure on the assessment form of his position, correct?-- Yes.

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Then the last line - or last sentence of the surgical comments is, "Dr Patel has been in this role for the past 12 months and his performance rates as excellent". That's signed by the employer at the bottom?-- Yes.

Thank you. Let's see the certification for Area of Need Application, see if the status of the position has changed bearing in mind there's disclosure of Director of Surgery on the assessment form. It will be the last three pages of the same exhibit.

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COMMISSIONER: In fact the fourth last page has the position Director of Surgery-SMO.

MR DEVLIN: Thank you. Director of Surgery-SMO on the fourth last page. So we see the position again with that hybrid description?-- Yes.

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Thank you.

COMMISSIONER: If we have the second page of that document brought up, Application for Area of Need Certification - yes, that's the one. The Board only provides registration for an Area of Need 12 months at a time, doesn't it?-- That's correct.

So as far as registration goes, there was no advantage in falsely claiming that Dr Patel had been re-engaged for a further four years?-- I suspect that's a typo.

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Well, I wonder about that because you will see the next entry is, "Date of visa requested", and a visa is sought until the 31st of March 2009?-- This form served a dual purpose. It was the form that Queensland Health supported a visa with and which it used for the Area of Need Certification.

So if there was a fraud being perpetrated, it may have been a fraud on the federal immigration authorities rather than the Medical Board?-- I'm not sure I can comment on that.

Yes, Mr Devlin?

MR DEVLIN: If we go to the last two pages then of this particular exhibit, we see that again the assessment form reveals the position Director of Surgery and - that's just up above a little, up above the boxes - no, that's right, Director of Surgery. And then in the boxes themselves he gets an exceptional tick for professional responsibility, demonstrating punctuality, reliability, honesty and self-care, and in his teaching role?-- Yes.

Would it be your expectation that Bundaberg Base Hospital would receive a flow of medical students from the University of Queensland and other institutions in the year, or don't you know much about that?-- I have no knowledge of that.

Thank you. Now, over on the next page we see a certification down the bottom of the page of Dr Keating dated 2 February, Dr Patel signing off on it on 4 February, and if we go to the top the supervisor's comments, "Dr Patel is a very committed and enthusiastic clinician who has continued to be a very effective member of staff and Director of Surgery. He has a very strong work ethic which is a model for others. Dr Patel is a willing and effective teacher who has continued to make strong contributions."

COMMISSIONER: And areas for improvement are listed as "nil significant".

MR DEVLIN: Now, we'll go over to the registration checklist which is number 39. Now, you seem to have written something on this one-----

COMMISSIONER: Looks like a post-it note has been attached to it?-- Yes, it was a post-it note. It was really for my memory.

Is that something we should ignore?-- No, it's - well, I'm not sure.

It's not part of the original form. Is it something added quite recently?-- Oh no, no, no. This was at the time when I discussed it with Dr Fitzgerald, which would have been on the 15th - or around about the 15th of February.

MR DEVLIN: I'm coming to a passage in his statement.

COMMISSIONER: Certainly.

MR DEVLIN: If we go back now, finally, to your statement, since we're near the end of the trail of documents, back at paragraph 7 you say you first became aware of concerns in relation to the medical competence of Dr Patel on or about the

15th of February. You participated in discussions with the Executive Officer, Mr O'Dempsey, and Dr Fitzgerald, Chief Health Officer of Q Health regarding informal complaints which had been made against Dr Patel. Is that right?-- Sorry, which paragraph is that?

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Paragraph 7. Just refresh your memory there. Paragraph 7 of your statement?-- The 15th of February, that's correct.

Thank you. Now, your note then applied to the registration checklist dated 14 February 2005 says what? I won't presume to interpret your handwriting?-- "Discussed with JAD" - that's Jim O'Dempsey - "and Dr Fitzgerald. No action on this pending substantive information re competence from Queensland Nurses Union or another source."

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Did you understand-----?-- It was due for - the registration would have expired on the 31st of March, so due 31 March.

Thank you. Did you understand from Mr O'Dempsey that some informal concerns had been verbally expressed to him by representatives of the Queensland Nurses Union?-- Jim O'Dempsey had had a meeting with Queensland Nurses Union on another issue - other issues. I'm not sure what it was about, but this arose incidentally in that discussion.

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Thank you?-- And he asked me what was happening with Dr Patel, and I told him it was up for renewal, but I hadn't made a decision on it yet, and so I deferred it.

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Right. And your notation down the bottom then, just above your signature, is "the matter to be referred to the Registration Advisory Committee for consideration for discussion with Dr Fitzgerald"?-- That's right.

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What did you mean to convey there?-- My delegation is to approve ones with no issues - applications for renewal with no issues. As soon as an issue arises, I wouldn't make a decision. I would defer it for discussion with the committee.

Very well. Now, in your statement, then, if we go back to that paragraph 8 - paragraph 8 relates to correspondence forwarded to the Board on the 23rd of March 2005 from Mr Messenger, the local member; is that right?-- Yes.

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So, your statement sets out the various correspondence passing between the Board and Mr Messenger-----?-- Yes.

-----about the matter - bearing in mind, I think, the evidence is here that he first spoke in Parliament on 22 March - I think that's the state of the evidence. Then you have referred at Exhibit 5 - if I can take you back there - to a letter received from Dr Fitzgerald on the 30th of March?-- Yes.

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I'm trying to maintain a bit of a timeline here for you. Is that Dr Fitzgerald's letter formally bringing to the attention of the Board a request for an assessment of the performance of Dr Patel?-- Yes.

Referring to a clinical audit which he had conducted; is that right?-- That's correct.

And pointing out concerns related to a perception of a higher rate of complications from his surgery, the conduct of complex operations at the hospital which are beyond the capability of relevant support services at the hospital; is that right?-- Yes.

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And a tendency to retain patients for too long at Bundaberg when optimal practice would dictate earlier referral to a facility where there is a higher level of expertise; is that right?-- Yes.

COMMISSIONER: Dr Fitzgerald, his official title is Chief Medical Officer, the Department of Health?-- Dr Fitzgerald is the Chief Health Officer.

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Chief Health Officer?-- He has an ex officio position on the Board.

I was going to raise that. On this occasion, it was rather fortuitous that the man conducting the investigation also

happened to be an ex officio member of the Board, so you could deal with these things, as it were, internally?-- And even more so, he is also the chairperson of the Registration Advisory Committee. 1

All right. What procedure would have been adopted - let's say, for example, the authorities at the Bundaberg Hospital had retained an entirely independent doctor, someone outside Queensland Health and someone who wasn't a member of the Medical Board to conduct this review, is there a process by which the doctors conducting that review would notify the Medical Board of their concerns?-- I'm not certain whether that would necessarily follow, but one would hope so. 10

MR DEVLIN: It might be a matter more for Dr Cohn.

COMMISSIONER: It may well be. I was just going to take the example I mentioned earlier, the situation at Hervey Bay and the report that we have already received into evidence in these proceedings about concerns with the competence of some medical staff in the Orthopaedic Department at Hervey Bay. Has anyone to this time, do you know, officially communicated with the Medical Board that there are concerns about individual medical practitioners at Hervey Bay?-- No, I'm not personally aware of official communications in that respect. I have heard that there are some issues being raised, but I'm not aware of them having been formally communicated to the Board. 20

It seems like a bit of a flaw in the system, doesn't it, if Queensland Health can undertake such a review and then the results don't get passed on to the Medical Board?-- They may have been. I'm not personally aware of it. 30

Thank you.

MR DEVLIN: So, that's the formal complaint, as it were, received by the Board from Q Health on 30 March, correct?-- Yes. 40

Now, if I can ask you then to flick back to Exhibit 40? Is Duncan Hill one of your staff?-- Yes, he is.

And this is a file note from him saying that he had spoken to Mr Leck and - who advised him that Dr Patel had verbally advised that he would not take up the contract on 1 April 2005?-- Yes.

And he asked that Mr Hill call again on 1 April 2001 with a definite answer as to whether Dr Patel's position at Bundaberg Base Hospital would be available, correct?-- Yes. 50

Then we have Exhibit 41, a written confirmation from Mr Leck received - dated and received on 1 April 2005 by fax, confirming that he is not employed - that is, Dr Patel not employed at the hospital as at 1 April 2005, and stating that he had been offered a further contract to the hospital from 1 April 2005 to 31 July 2005 and it appears unlikely he will

take it up?-- Yes, I remember I was - I remember Duncan Hill discussing these matters with me and I had given him instructions to try and establish whether Patel was likely to be offered further employment, and it seemed right up until that moment when the day passed that he was - we couldn't get a definite answer out of the hospital, and it was only after the day that we asked for confirmation that he wasn't employed anymore, and then we could readily deal with the application for renewal by simply dismissing it.

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Thank you. Indeed, the letter advised from Mr Leck that Dr Patel was scheduled to leave Australia on 4 April?-- Yes.

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And therefore the application for renewal was, in fact, cancelled?-- Yes.

Now, on the 8th of April - going to paragraph 13 of your statement then - on the 8th of April - sorry, we will go to 12. You revisited the "Verification of Licensure" document and picked up on the significance of the notation, "Public order on file. See attached."?-- Yes.

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You say that you conducted an Internet search and discovered that from the Oregon Board of Medical Examiners, they had restricted his practice of surgery and that Dr Patel's licence to practice medicine had been surrendered in New York as a result of disciplinary action; is that so?-- That's correct.

COMMISSIONER: Mr Demy-Geroe, was it a complex or time-consuming exercise to find out that information?-- No, it didn't take long, but it doesn't appear on the first - one has to search for disciplinary actions. It is not the first entry that you can come into for the Oregon Board of Medical Examiners, nor is it for the New York Professional Licensing Body.

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So, you went to the official web sites for the licensing authorities and then searched-----?-- Searched for disciplinary actions until I found something.

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I think Mr Thomas indicated in his newspaper article that he simply did a Google search and found Dr Patel's details that way?-- I'm sure it wasn't as simple as that.

All right. We will hear from Mr Thomas?-- He knew what he was looking for.

Yes, I see.

MR DEVLIN: Now, going back then to your report dated 13 April which was tabled in Parliament, if we go to pages 3 and 4, in particular 4.2, 4.3 and 4.4, you outline in summary form the results of your search, revealing, in particular, in paragraph 4.2 that, "An Amended Stipulated Order was entered on 12 September 2000. The order restricted licensee from performing surgeries involving the pancreas, liver resections and ileoanal reconstructions.", and then you have included some of the glossary of terms which is provided by the Oregon Board of

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Medical Examiners; is that right?-- That's correct.

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So, "Public order on file" turns out to mean the Board of Medical Examiners has taken action that has resulted in a public order which relates to the licensee's right to practice, correct?-- Yes, it is clearly terminology taken out of their legislation.

Right. So, you, in fact, kind of followed a trail of terms to try to appreciate what the effect of the certification was?-- Yes.

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On the Certificate of Licensure?-- Yes.

So, a Stipulated Order then - a wonderfully American term - says, "An agreement between the Board and a licensee which concludes a disciplinary investigation. The licensee admits to a violation of the Medical Practice Act and the order imposes actions the Board and licensee agree are appropriate. Stipulated orders are disciplinary actions."; is that right?-- Yes.

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Then over the page at 4.4, you searched the website of the New York State Office and you found this entry: "Effective date: 5 October '01. Action: licence surrender. Misconduct Description: The physician did not contest the charge having been disciplined by the Oregon State Board of Medical Examiners for negligence involving surgical patients."?-- Yes.

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Now I'm just trying to remember, up until September 2002, Dr Patel put his employment, I thought, in Oregon, although there was a period in Buffalo, New York State. I'm just interested in why New York State has a role to play in this-----?-- I'm not-----

-----if the original actions were in Oregon?-- This is - he seems to have maintained registration in New York and Oregon, and New York picked up on his history in Oregon - it probably took a while for them to be notified - and then there was a period of investigation and negotiation with him and that was the outcome.

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COMMISSIONER: I think it appears from your documents he did his initial training in the state of New York, didn't he?-- Yes.

Then he moved to Oregon, so presumably he still had a New York licence he tried to renew?-- He seemed to have maintained it. I'm not sure how they maintained it. In some jurisdictions you can maintain a registration by paying a fee just by being an absent registrant and that could be the case there, but I really don't know.

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MR DEVLIN: So, if we look at your summary between the Oregon entries at 4.2 of your report, which was ultimately tabled in Parliament, the Amended Stipulated Order was entered on 12 September 2000. It appears when you turn the page that the

New York entries were made on the 5th of October 2001. So, just over a year later?-- Mmm.

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Then by the paragraph 4.5, the New York orders were effective as of 10 May 2001?-- Yes.

So, New York seems to have taken about a year to catch up with him and to enter their records accordingly?-- Yes.

At least on their face.

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MR BODDICE: Commissioner, I think that perhaps the effective date is given in the American way which is 10 May 2001 and not 5 October 2001.

MR DEVLIN: That's right.

WITNESS: Thank you, Mr Boddice. That's correct. That's why I wrote the date out on the next paragraph. I'm quoting exactly what was in the record.

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MR DEVLIN: So, to take up on the Chairman's observation, it seems the state of origin - to use a buzz phrase - caught up about a year after and entered their records accordingly?-- Yes. There's correspondence on the New York website which shows that it was the subject of negotiation for some time.

Now, one of the questions that people would want you to be asked in public is why can't this happen every time? Why can't every applicant be searched on the net?-- Well, there's a number of reasons. Probably Mr O'Dempsey would be able to answer it better than I, but-----

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Just from the operational point of view, if you can confine yourself to that?-- It is time-consuming. Not every jurisdiction maintains a register on the website. Even those that do, sometimes they don't maintain disciplinary action - past disciplinary actions. Again, you have to know what you are looking for. It is quite time-consuming. We have developed a software program that does a trawl, but it also picks up all sorts of things like doctors who have been disciplined by their local polo club, or whatever, so it's not a very definitive way of finding out about a person. A Certificate of Good Standing, providing all the information which it should, would be a better way of getting a handle on a person's professional history.

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And as you said to the Chairman earlier, that's been one of the focuses of your move towards improving things; that is, to receive Certificates of Good Standing directly from the organisations that are to issue them?-- Yes.

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COMMISSIONER: Mr Demy-Geroe, I think I read somewhere in the material that I have been looking at in the last four weeks - and I couldn't put my finger on it immediately - a suggestion that there's an international database either in existence or being created to allow registration authorities world-wide to share information of this nature. Has that come to your

attention?-- No, I don't know of such a database. There is a credentialling service that's available. That's more to do with documentation, and that's in the United States. This is the thing: we don't get a large number of doctors from the United States, so what's available there isn't necessarily what's available in Germany or the Netherlands or other places where quite a number of doctors are now arriving from.

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And you would have language problems and so on with those sources as well?-- Yes, that's obviously an issue, too, yes.

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And have you had the opportunity to study how this is handled either in other states of Australia or overseas - how people deal with these problems?-- Other states in Australia tend not to have as large a number of special-purpose registrants as Queensland does. I think it is a problem for every jurisdiction, but clearly it is a bigger issue for Queensland and perhaps Western Australia and Tasmania, too. Proportionally, Tasmania, of course, has quite small numbers over all.

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MR DEVLIN: Have you included as Exhibit 9 to your statement then the entries that you did find in relation to the disciplinary action taken by Oregon and New York state against Dr Patel?-- Yes.

Thank you. I commend those to the Commission.

COMMISSIONER: Thank you.

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MR DEVLIN: Now, I think I can move on now to a different topic. I note the time.

COMMISSIONER: Would you like to take a break now and-----

MR DEVLIN: Thank you. I shan't be long after lunch.

COMMISSIONER: Thank you.

MR DIEHM: Just before we rise, Commissioner, during the course of this witness' evidence, you made reference to concerns about a document which Dr Keating had sent to the Medical Board that made reference to an extension of the contract. It made reference to whether that amounted to a fraud on the Medical Board or, in the alternative, a fraud on the immigration authorities.

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COMMISSIONER: Yes.

MR DIEHM: Mr Commissioner, my submission is that there isn't any evidence before the Commission at this point in time that would warrant any conclusion that that amounted to a fraud of any kind.

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COMMISSIONER: Well, you are welcome to offer your client's explanation for it. My recollection of the evidence is that without consultation with Mr Leck, your client wrote to Dr Patel offering to extend his employment for a period of

four years and Dr Patel rejected that offer and your client then sent him a letter expressing his regret that he hadn't taken it up, but there seems to be nothing to support what appears in his documentation to the Medical Board that such a contract had, in fact, been granted.

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MR DIEHM: Mr Commissioner, my point at the moment is simply these are matters yet to be explored, and it would be just unfortunate if members of the press, for instance, present here, took your comments as indicating that that was, in fact, the position - that the sending of that document would amount to some kind of fraud.

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COMMISSIONER: Well, as I read the letter of 31 January 2005, it says quite explicitly that the Bundaberg Health Service District has extended the contract to 31 March 2009, which seems to be contrary to the facts. Now, if you want to offer an explanation on your client's behalf, I'm very happy for you to do that, but I'm - you know, unless you are in a position to offer that explanation, now or at some later time, you know, it is not very helpful simply to stand at the Bar table and say there might be some innocent explanation which we are not being told about.

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MR DIEHM: Mr Commissioner, my concern is that when these matters have not yet been explored with Dr Keating, or, indeed, with any other person who can give evidence about them, that it would be troublesome if it appeared that the view was that it was a fraud.

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COMMISSIONER: Well, obviously anything I've said in the course of discussion in this room doesn't reflect a concluded view, and there may be a perfectly innocent explanation - it might be as the witness said, it was simply a typographical error, but the concern at the moment is that from what your client said on Thursday of last week, by 31 January 2005, he knew that Dr Patel was not going to take up that extra contract until March 2009 and yet here he is writing to the Medical Board saying the contract has been extended, and we see in one of the other attachments that this is in support of a visa extension until the 31st of March 2009. Those facts speak for themselves. If there is an innocent explanation, I invite you again to tell us what it is, so that we can - so we can take that into account. But in the absence of some explanation, I would have thought the present media are perfectly entitled to draw from those facts whatever conclusion they regard is appropriate.

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MR DIEHM: Mr Commissioner, I don't intend to have my client give ad hoc - perhaps a better expression is on-the-run responses to individual things when those things need to be dealt with in the proper course.

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COMMISSIONER: That's entirely a matter for you, but the evidence is there and without any response from your client, I should have thought that the press and anyone else is entitled to draw their own inferences from it.

MR DIEHM: Thank you.

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COMMISSIONER: Do you wish to say anything about that, Mr Andrews?

MR ANDREWS: Only this: Mr Diehm's client is being offered the liberty through his counsel to provide a version which Mr - which Dr Keating would be expected to swear to at some later time. The liberty isn't to make an address about how unsafe it is to act upon evidence at this stage before Dr Keating has been given the opportunity to respond.

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COMMISSIONER: Thank you. Mr Diehm, I will say this, which may go some way to ease your concern: the fact that I used the word "fraud" in the discussion or the exchange with the witness certainly shouldn't be taken by anyone as suggesting I've formed a view that, in fact, a fraud was perpetrated. As I indicated, I think quite early in the proceedings last week in robust exchanges between both counsel at the Bar table and the Bench and the witness in the witness-box, one often expresses things in a way intended to excite a response or to engender discussion, and that doesn't for a moment suggest a concluded view, and if and when your client chooses to respond to this evidence, then, of course, that response will be given whatever weight it deserves, but at the moment the only evidence on this subject is the evidence your client gave last Thursday, combined with what appears on the face of the documents, and I don't think there's anything I can do to help you, beyond doing exactly what Mr Andrews has indicated, and that is giving you the opportunity to inform the inquiry what response your client would be expected to give in the witness-box if he were there now.

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MR DIEHM: Thank you.

COMMISSIONER: I don't see what else I can do, frankly.

MR DIEHM: Well, Mr Commissioner, you have responded to my primary concern, which was to make it clear to all those present that just because you have used the word "fraud" in your questions or observations to the witness doesn't mean that you have formed a concluded view that there was a fraud.

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COMMISSIONER: I certainly haven't, and I think, indeed, I was careful enough to express my question in terms that said if there were a fraud perpetrated, then it would seem that it was against the Federal Immigration Authorities rather than the Medical Board, but that question involved an assumption which is yet to be proved one way or another.

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MR DIEHM: Thank you.

COMMISSIONER: Anything anyone else wishes to raise? Otherwise we will resume at 2 p.m..

THE COMMISSION ADJOURNED AT 12.56 P.M. TILL 2 P.M.

THE COMMISSION RESUMED AT 2.05 P.M.

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MICHAEL STEVEN DEMY-GEROE, CONTINUING EXAMINATION-IN-CHIEF:

COMMISSIONER: Thank you, Mr Devlin. Oh, I am sorry, Mr Boddice.

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MR BODDICE: Just before we start, just further to Ms Kelly's concerns this morning can I just let you know that the steps the Director-General took after that public interest disclosure was signed was to have the memo sent to the District Managers with instructions that it be made available to all staff by email and hardcopy, to be placed on noticeboards in each district, and also to be sent to all corporate office and Statewide Health Service Units, and the Director-General has also asked that people confirm that they have done those things-----

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COMMISSIONER: Yes.

MR BODDICE: -----in relation to it, and it was also sent out in a special broadcast email to all staff. My instructions also are that if it would be of some assistance, we're happy to tender it for it to be able to go on the Commission website but we feel we've distributed to everybody.

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COMMISSIONER: Since Ms Kelly asked for it, I have no objection to it becoming an exhibit and going on the website as long as the Director-General is happy with that. Is there anything in it-----

MR BODDICE: Yes.

COMMISSIONER: No patient names or anything like that that we'd need to keep confidential?

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MR BODDICE: There should not be. No, it is mainly designated legal representatives and partners. I tender a copy.

COMMISSIONER: Thank you, Mr Boddice. Please convey to the Director-General my thanks for the steps that you have mentioned. The memorandum from the Director-General of Queensland Health dated the 25th of May 2005 will be admitted and marked as exhibit 25.

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ADMITTED AND MARKED "EXHIBIT 25"

COMMISSIONER: Mr Devlin?

MR DEVLIN: Thank you. Mr Demy-Geroe, if we could just go to paragraph 60 of your statement, you make reference to an audit which was conducted of special purpose registrants in April 2005 to ascertain if there was any discoverable evidence of fraudulent activity. What role if any did you play in that audit?-- It was conducted by experienced staff who looked through all of the Special Purpose Registration files, particularly with a view to ascertaining whether a similar omission had occurred in respect of any other applicant for registration. There was a second part to the audit which was with a view to conducting internet searches to determine similarly whether there had been any undisclosed disciplinary history. My part in the audit was to review the files where queries had been raised.

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Were any instances of suspected fraudulent activity discovered over and above what we've heard about in respect of Dr Patel's application?-- No, there weren't.

Thank you. Now, you also mention in paragraphs 61 and subsequently of a Dr Henry Andy who worked at Bundaberg Base Hospital, again under Special Purpose Registration, and you explain in your statement that there were no issues or reasons for concern relating to his qualifications to practise. Is that right?-- That's correct.

20

And your understanding is he had problems with his Visa and left Australia for that reason?-- That's my understanding.

Thank you. Now, with respect to Dr Tariq Qureshi, have you today reviewed the registration file for Dr Qureshi?-- Yes, I have.

30

Have you got it there and can you give us a brief overview of Dr Qureshi's qualifications as disclosed in the documents?-- Starting from the beginning?

You have flagged six flags, have you?-- Yes, I have.

What's at flag one?-- Flag one is the curriculum vitae which was submitted.

40

Does that show-----?-- It - sorry?

In your experience does that show appropriate qualifications?-- Yes, it does, particularly - I particularly draw attention to the fact he appears to have done the USMLE examinations.

U-S?-- M-L-E, United States Medical Licensing Examination, I believe it stands for.

50

Is that of more than usual significance, and if so why?-- It is. It certainly indicates a standard that's been reached. The USLME isn't an easy examination, as far as I am aware.

You are using M-L-E?-- U-S-M-L-E.

Right, yes, go on?-- It also discloses that he'd had clinical attachment in the Department of Accident and Emergency at Inneskillen in Ireland.

1

That's the connection you talked about earlier about having experience in European hospitals?-- Yes.

Thank you. What's the next flag?-- I flagged the two testimonials that had been received. Nominated-----

10

What flag number are you up to?-- Number 3.

Number 3?-- As much as one can read in a reference, of course, he appears to have been working at a large hospital in Karachi, which wouldn't be bad experience.

And prior to the Irish experience?-- Prior to the Irish experience.

Thank you. Flag 4?-- Is a referee report in the same format that we use.

20

Quantum Recruitment report?-- Yeah.

If we look down-----?-- And-----

If we look down into the table, we see ticks in the "excellent" and "good" columns. So that's, at least on its face, an independent assessment of his various skills?-- This is one of his nominated referees.

30

Yes?-- The recruitment company has followed up on that one.

COMMISSIONER: Is that a usual thing for recruitment companies to do?-- They do do it in various degrees. I am not sure exactly what the format is. We are developing, actually, a format for them to use so it is consistent and we can refer to it.

Just that in the case of Dr Patel-----?-- No.

40

-----it doesn't seem that anything of that nature was done?-- No, I understand from Wavelength that they have also recently started initiating referee checks.

Right?-- As I have said, our referee - our standard referee format will mean that we will be able to look at it and understand it very readily.

Right.

50

MR DEVLIN: So do you understand this document to be some physical evidence that the Quantum Recruitment company has checked with a referee nominated by the applicant?-- Yes.

I see. It is not just the recruitment company's view of it all, it is going back?-- Dr Ramin is one of the referees nominated in the application.

If we just turn that page there we will probably see that.
We see down the bottom probably there will be a signature or
some detail anyway of the referee?-- Yes.

Thank you. Flag 5?-- Flag 5, IELTS Certificate.

Is that the certificate of good standing emanating from the
hospital in Inneskillen, Ireland?-- No, no, sorry. Have we
got something confused there, have we?

What's that one?-- It should be the IELTS certificate.

What does that look like?-- We seem to have missed - that
should be earlier.

Is that - not the English language document?-- Yes, the
English language document.

Look at the heading of that, International English Language
Testing System. Does that show that he fared well?-- That
showed that he has got a good standard of English.

Very good. Flag 6?-- I think we might be out of sequence
here. Flag 6 was intended to be the one that was on
previously. That was the-----

Certificate of good standing?-- Certificate of good standing
from the United Kingdom.

Thank you. We will pass over to the next one then.
Application for Area of Need certificate?-- That wasn't one I
had flagged.

All right then. You were pointing to the certificate of good
standing?-- Yes.

Thank you. I will tender that registration file for
Dr Qureshi.

COMMISSIONER: We don't want to disturb your filing system.
Is this a copy that you have prepared for the inquiry?-- Yes.

All right. Well, the copy of the registration file will be
received in evidence and marked as exhibit 26.

ADMITTED AND MARKED "EXHIBIT 26"

MR DEVLIN: I will indicate, Chairman, that there are
complaint files available. They relate to complaints of a
sexual nature, not a clinical nature, but I am happy to
produce them if required.

COMMISSIONER: I am content to leave that to your discretion

as to whether you think it is useful to the inquiry. I know we've heard evidence about doctors' indiscretions, but unless there is something that goes to a systemic failure in the registration process or something of that nature, I don't think we need concern ourselves with the titillating details.

1

MR DEVLIN: Indeed, thank you. If we can pass now to Dr Keith Muir on the Sunshine Coast. You have set out some details of his registration from paragraphs 65 to 73 of your statement. And in a nutshell, are you able to say that the actions - the disciplinary actions in New Jersey and New York in the United States postdated his registration in Queensland?-- Yes, that's true.

10

And in a nutshell, he applied for registration - paragraph 69 - on 20 July 1992, was granted provisional registration from 21 July '92. Is that right?-- Yes, that's correct.

And that it transpired that his licence to practise - paragraph 66 - practise medicine in New Jersey had been revoked on 10 November 2003 and his licence in New York State had been revoked on 6 January 1995?-- Yes, that's correct.

20

And so a show cause notice has been issued to Dr Muir in May of this year in relation to the situation?-- That's correct.

Thank you.

COMMISSIONER: Dr Muir, I assume from your earlier evidence, ought to have brought to the attention of the Board those subsequent disciplinary matters?-- Yes.

30

In a foreign jurisdiction?-- Yes, that's a requirement.

I did ask you earlier about Dr Muir, although I am not sure that I mentioned his name. If you go to your exhibit 45 - I think 45 is the entire record relating to his registration, is it?-- It appears that's the case.

Yes. The third page in the copy I have looks like an office copy of a letter from the Registrar to Dr Muir at his address in New Jersey in the United States?-- Yes.

40

Dated 23rd of - the rest of the date is illegible on my copy. Can you make that out?-- It would appear to be July.

The year doesn't come across. In any event, what I had noticed earlier was that in the fourth paragraph - perhaps this could be put up on the screen, if there is a copy handy - in the fourth paragraph you see there is the last sentence reading: "If you should wish to apply for registration as a medical specialist in Queensland, it will be necessary for you to do certain things." That led me to suppose that his initial application wasn't an application for registration as a specialist, but have I misunderstood that?-- No, you are perfectly correct, Commissioner. I made a mistake earlier. He had general registration in the first instance and later on he obtained specialist registration.

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Does that appear somewhere from these documents when he later obtained specialist registration?-- I believe it doesn't. Not in these documents. I haven't looked at the file for a while, so my memory wouldn't be reliable now.

1

But in any event it is your understanding that at some later time he did obtain specialist registration?-- That's my understanding.

10

Yes. If it matters, we might be able to check that up later?-- Yes.

But that's the way the evidence stands. If you can go to another page in that section - it doesn't have a form number on it but it is about six pages over - there is a document headed "Medical Board of Queensland, questions to be answered by applicant for registration"?-- This is the application - this is the old form of application for registration.

20

That's what now would be I think your form 1, is it?-- No, form 1 is the position description and requirements document. This equates to an application for registration form that we have now but which is much more detailed. This was a very old-fashioned form.

I see that two referees are given in item 8. Would I be right in assuming that again, unless there was some specific matter of concern that had been raised, it would not have been the practice to contact those referees?-- That's correct.

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Yes, thank you, Mr Devlin.

MR DEVLIN: Thank you, I have no further questions of Mr Demy-Geroe at this point.

D COMMISSIONER VIDER: I don't have any further questions.

COMMISSIONER: There are a couple of things of a general nature that I wanted to ask you about. What would you say to the suggestion that the Medical Board is presently under-resourced in terms of its ability to carry out comprehensive background checks on people applying for registration in Queensland?-- For it to initiate comprehensive background checks of its own accord, out of its own resources, no, I don't believe it has the resources.

40

I also wanted to ask you about the relationship between the Medical Board in Queensland and corresponding authorities in other States. I understand there is now a system of mutual recognition, so that if, for example, an applicant obtains registration in Western Australia, for example, that applicant will be automatically given registration in Queensland as well?-- That's correct.

50

All right. So, in a sense, if any new system were to be implemented to ensure comprehensive background checks are undertaken, it would have to be implemented on a national

basis. There would be no point Queensland having a tighter system if people can come in through other States or Territories?-- It would certainly be a weakness if it wasn't consistent. It would come down to the weakest link.

1

Right. Is there regular liaison between yourself or your Registrar and your opposite numbers in the other States and Territories?-- Yes, there is. The executive officer would be able to give you a better background on what happens. He represents the Board at national meetings frequently. He is a member of various working parties that look at these types of issues, and to answer the question there is considerable interaction between the Boards.

10

You mentioned a number of matters of concern that have come to your attention and a number of reforms that have been implemented over recent years to address those problems, such as the English language test and other requirements. Is it the case that similar reforms have been or are being adopted in other States and Territories?-- Yes. I think everyone is moving in the same direction.

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Anything? Well, I suppose it is time for cross-examination. Does anyone have a preference as to the order in which that takes place? Any volunteers?

MR BODDICE: I will go first.

COMMISSIONER: Thank you.

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CROSS-EXAMINATION:

MR BODDICE: Mr Demy-Geroe, if we can deal first of all just generally with registration. Registration of medical practitioners, I take it, is really a personal issue for the particular registrant to ensure that they get the registration, satisfy the Board of the requirements and continue to maintain that registration?-- It is their personal responsibility.

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Yes. In the case of special purpose registrants, there is, however, a requirement that the Area of Need certification be satisfied by the employer or the sponsor so that they can satisfy that one aspect of the special purpose registrant that the Board has, is that the case?-- That's right.

50

Is this where these recruitment agencies, as you have referred to, come into play?-- Yes. They - well, it is a much more complex world for recruiting and so recruitment agencies fill that role. They locate the people, usually, and then they assist them through the process of immigration, area of need and settling into the position.

And you were saying that there has been a growth in the number

of these recruitment agencies in recent years?-- I couldn't give you numbers but that's certainly the case.

1

Do they each have, in effect, a standard system that they adopt, or do they adopt different systems, in your experience?-- No, they - they recruit in their own areas or they recruit in specific fields. There is a lot of different approaches that are used by recruiting agencies. Some of them have got no - some of them don't deal, really, with Queensland Health at all. They concentrate their efforts on medical deputising locum vacancies, and others deal with public hospitals directly, others deal with the Queensland Health.

10

So the only link in terms of what they may do as a common requirement would be where the Medical Board, for example, has special forms that have to be signed in - has to be completed, like your form 1, form 2?-- The processes are the same.

Yes. So the recruitment agency, in effect, sends to the Medical Board all of the relevant documentation, including the Area of Need certification documentation?-- That's - that's generally the case. It isn't necessarily always through recruitment agency that does that, though.

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When you then get the material - you were saying something about the interview process with the particular registrant?-- Yes.

1

Do I take it that once the Medical Board has the material - that's from the recruiting agency - their contact then is with the actual registrant by having this meeting with the registrant? Is that the case?-- The Board's contact?

Yes?-- Yes, initially that was - when there was an interview process in place, that was when the Board met with the registrant. Now there's no interview undertaken any more. There isn't any direct contact in most cases.

10

So dealing with when the interview system was in place - because that's the one that's relevant to Dr Patel - apart from the Board, if it requires further information from the recruiting agency by writing to the recruiting agency and asking for some information, if you have all of the necessary documentation, the Board then makes a decision, the Registration Advisory Committee first of all making a recommendation - the Board makes a decision, and then the personal aspect comes in, that is the registrant has to come and have the interview with the Board member?-- That was how the process worked, yes.

20

And then once they're registered they're given a Certificate of Registration and the employer, as we've seen here, Queensland Health, is sent a cc copy of the letter confirming registration?-- That's correct.

30

But the Board doesn't have any direct contact with the employer that's certified for the Area of Need?-- Not usually, no.

And then in the case of the renewal process, because you said they have to renew their registration every 12 months, from what we've seen in this material here, the Board will, as a matter of course, send off documentation reminding that there is a need for a renewal to be undertaken?-- Yes. It should be three months before the expiry of the registration.

40

And then either the employer or the registrant, depending on their circumstances, will then send back the necessary documentation for the Board to consider-----?-- Yes.

-----in that renewal process. But again, apart from any queries in respect-----?-- Sorry, did you say the employer sends back the document?

50

The employer or the registrant?-- It's the registrant's personal responsibility to make the application. Whatever supporting documentation has to be arranged, that's up to them too. We have to receive it.

The reason I use the word "employer" is in the case here the letters have shown there were some sent by Queensland Health enclosing the relevant form for the renewal?-- Yes.

But ultimately it's the registrant's responsibility is what you're saying?-- Yes. 1

But again in that renewal process, unless the Board has a query in respect of the documentation, there will be no communication between the Board and the employer, for example, in respect of that renewal process?-- Well, there will be to the extent that there's a performance report required to be submitted. 10

Yes, I understand that. That's what I'm saying. Provided the employer has provided the necessary documentation that the Board requires in order to assess the application, there's no other communication between the Board and the employer in terms of determining whether the renewal will be approved?-- Oh, there's - there could well be inquiries made.

Yes, I understand that. So if the documentation doesn't satisfy you, for example, or you have a query in relation to it, then there may be further inquiries made with the employer or the registrant. Would that be so?-- Yes. At that time - at the time when Dr Patel was registered it was fairly common practise for registration officers to contact the sponsor or the registrant directly and tell them what the outstanding documentation is, for example. 20

Yes. So if you needed something, you'd just simply pick up the phone and ring and say, "This is what we need."?-- That's right, or send an email. It's a different process now. Now we do a formal notice under section 461 requiring outstanding documents to be provided within a 30 day period usually. 30

When was that more formal process adopted?-- It was always there. The capacity to do it was always there. It just wasn't consistently applied. Now we always ask for documentation formally.

When you say "now", when did you bring in that-----?-- Post Patel, if I can use that term. 40

Some time this year?-- Yes.

COMMISSIONER: Some time in the last two months.

MR BODDICE: All right then. Now, you said in evidence that there is, of course, power for conditions to be imposed-----?-- That's correct.

-----in relation to a particular registrant?-- Yes. 50

And those conditions, I take it, can be imposed when they're first registered, or when a renewal takes place?-- Yes.

Or indeed during the year if something is raised?-- I'm not sure about the ease of imposing conditions once the registration has been approved. I think that would require some action under the Professional Standards Act.

It would require some form of complaint or something, an action in respect of that. Is that what you mean?-- Yes.

1

In deciding whether to impose conditions, would the Board take into account matters such as qualifications, prior experience, position to be fulfilled, all of those matters?-- All of those.

And if the Board had any concerns in relation to the particular applicant, could they also ask for further material to satisfy those concerns?-- Yes, yes.

10

And in your experience is that what they would do if they had any concerns?-- Yes.

You've given some evidence in relation to what happened in respect of Dr Patel, and you said that in February of this year there was a meeting between Mr O'Dempsey and some representative of Queensland Nurses Union?-- Yes.

20

For some other reason, but as you understand it issues concerning Dr Patel were raised at that time. Is that so?-- That's my understanding.

But the following day, Dr Fitzgerald also had a discussion with Mr O'Dempsey, as you understand it?-- And myself, yes.

And yourself. So you were actually party to that conversation?-- Yes, that's correct.

30

And Dr Fitzgerald, at that time, indicated that he was undertaking this clinical audit?-- Yes, he did, yes.

And did he indicate that he had some concerns?-- I don't recall whether he indicated particular concerns at that time. He advised to leave it until something more definitive was known. I think whatever I wrote in my post-it note.

Yes.

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COMMISSIONER: In effect to defer-----?-- To defer it until there was some outcome to the investigation.

MR BODDICE: So Dr Fitzgerald certainly flagged with the Medical Board in mid-February that you should defer the application for renewal pending further information?-- Yes.

And then you were taken in evidence to the formal letter that was sent by Dr Fitzgerald on the 24th of March-----?-- Yes.

50

-----of this year outlining formally what those concerns were?-- Yes.

Would the Board's position be that there would be a requirement for a formal letter to be received before the Board would action any matter of concern?-- We needed - for the Board to determine to refuse an application for renewal or

to cancel a registration or take whatever steps are available to it under the legislation, it would need to have something firm to go on, and at that time it was - there wasn't too much that was substantive, although there was certainly enough concern around to make the Board be cautious about it.

1

So when Mr Messenger's letter came into the Board on 23 March 2005, the Board had already had flagged by the meeting with Queensland Nurses Union, and also by Dr Fitzgerald, that there were potential issues in respect of Dr Patel?-- Mmm.

10

And whilst not having formally rejected or deferred his application, had simply put off dealing with his application-----?-- Mmm.

-----at the February meeting?-- Mmm.

And then subsequently, after the formal complaint by - or formal notification by Dr Fitzgerald, the Board then made inquiries as to whether Dr Patel was seeking to renew his registration. Is that the case?-- That was - there were parallel things happened. When Mr Messenger's letter was received, my recollection is that it was referred for investigation. It was regarded as a complaint. In a parallel way, we were looking at whether he was going to be continued to be employed by Queensland Health, and if that was the case, then we'd have to proceed to determine his application for renewal. If he wasn't employed - as it turned out, if his contract lapsed, he was no longer employed, then he wouldn't have been eligible for renewal and we could deal with it that way.

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Because he wouldn't be registered?-- Wouldn't have been eligible for renewal because his registration would have lapsed. So if he wanted to continue his registration subsequent to that, he would have had to make a fresh application.

You spoke about visa requirements and you said that the recruiter also deals with the visa requirements. Is it your understanding that in the case of the overseas trained doctor - or international medical graduates, I think is the more modern term used for them?-- IMGs, yes.

40

That, in effect, they get sponsored by the employer and that's the basis they get a visa into the country?-- That's my understanding. I really don't - I'm really not familiar entirely with the visa requirements.

Now, you were taken to some of the documents. If I can take you first of all to MDG24.

50

COMMISSIONER: Mr Boddice, do you want these put up on the projector as we go through them?

MR BODDICE: It might be helpful, I suppose, so that everybody can follow. Thank you, Commissioner. This is the document where you had your handwritten addition as "SMO - surgery"?--

Yes, that's correct.

1

If you just look slightly above the comments though, you will see the position - the typed document - the position actually says "SMO - surgery". Do you see that?-- As "SMO - surgery", that's correct, yes.

I'm just seeking to understand your evidence. Was your evidence that the reason you had written that in was because he had elsewhere specialist qualifications and so you were flagging for the relevant committee that he was seeking registration as an SMO in surgery rather than registration as a specialist? Is that what you were saying?-- As you've pointed out, the position was SMO - surgery, but my concern was to ensure that the recommendation goes up with that included in it. So that the approval would be as an SMO in surgery, rather than leaving that unsaid and perhaps open for misinterpretation later on.

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Just in relation to that, if we go to MDG31, which is the initial Certificate of Registration for 1 April 2003 to 31 March 2004, as you said, this one says to practise as a senior medical officer in surgery?-- Yes.

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But when you compare that against MDG36, which was something that our learned friend Mr Devlin raised with you, do you notice that the registration certificate for the 1st of April 2004 to 31 March 2005 doesn't have that requirement?-- Yes.

Now, of course when the renewal comes in there is specifically the reference to Director of Surgery - SMO, but the certificate has changed the wording that was provided. Do you know why that was so?-- No. I can't comment on that. I really don't know. In my view it should have been the same, but clearly it wasn't done that way.

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I'd just like to take you to MDG33, if we can, please, which is the application for renewal. If we can go to the Area of Need position description document which is about eight documents in.

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COMMISSIONER: That's the Form 1.

MR BODDICE: Form 1. Yes, thank you. That clearly indicates the title of the position is Director of Surgery at the top?-- Yes.

And also indicates in the surgical section of the description of the document that Dr Patel had been in the role for the past 12 months and his performance rates as excellent. See that?-- Yes.

50

So when the renewal application was put in in December, the Board was advised that Dr Patel's position was Director of Surgery and that he had held it for the past 12 months?-- Yes.

Now, if I can take you to Exhibit 39, did I understand you to say that Dr Fitzgerald in fact was the Chair of the Registration Advisory Committee?-- Not at that time.

He is now, is he?-- He is now.

But he was a member of that Committee, was he, at that time?-- I believe he was. I'm not certain of that, but I believe he was.

And then Exhibit MDG40, if we could, there's two file notes that form part of that exhibit, and you were taken to the first file note, but not the second file note. Could I take you to the second file note which is dated 1 April 2005? This is a file note of Mr Hill's. You see in the last paragraph that Mr Hill was advised that Dr Patel couldn't make up his mind whether to accept the position or not?-- That was the understanding I was given at the time too, yes.

And does that explain why Mr Hill made a call on the 31st of March, and then actually then made a couple of calls on 1 April, to find out what the position was?-- Yes.

And the relevance of that was because you wouldn't have to consider the application for renewal if he declined the contract, but you would have to consider the application for renewal if he accepted the contract?-- Yes.

So from the Board's point of view, they needed to know what the position was in order to determine whether the application had to be considered?-- Yes.

And-----?-- If I could just be clear on this, this wasn't something that had been discussed actually by the Board. It was my decision that it would have been so much easier if it went away rather than having to be determined.

Yes. When I use "the Board", I didn't mean the Board formally, but from the Medical Board's point of view of its processes of considering the application, they needed to know whether in fact it was being pursued to determine what they should do in those circumstances?-- That's correct.

And then in the last conversation of that day - sorry, then the following exhibit, which is Exhibit 41, is a letter sent the same day signed by Mr Leck indicating that the position - confirming that in fact the contract had ceased and that his employment had ceased, and indeed advising that Dr Patel had indicated that he was scheduled to leave Australia on the 4th of April 2005?-- He was asked to provide that letter and he did.

So as you understand it, following the discussion with Mr Hill, Mr Leck was asked to put in writing what the position was?-- Yes.

And that occurred, and was sent by facsimile, it would appear, the same day?-- He had verbally confirmed that Patel wasn't employed by Queensland Health on that day, and he'd be leaving the country, and he was asked to confirm that in writing and that's what that letter is. 1

In terms of the Area of Need Certification process, the Board requires an Area of Need application, in effect, when it's considering the question of the Special Purpose Registration. Is that the case?-- The Area of Need category, section 135 of the Special Purpose categories, and a qualification for registration is certified for Areas of Need, so a prerequisite is that there's a Ministerial determination for the Area of Need, and that's undertaken by the Minister's delegate. 10

But that certifies that, in effect, there's a position that falls within the Area of Need category. Is that the case?-- Yes. Well, it's identified as an Area of Need position.

But it's still a matter for the Board in its processes to satisfy itself that the particular candidate that is being brought forward is eligible for registration in the position that is sought?-- Absolutely. 20

One other matter. Are you aware, Mr Demy-Geroe, of a suggestion - or a request that was made by Queensland Health in 2003 about trying to arrange an approved accreditation procedure?-- I've been shown a letter which I've misplaced somewhere. 30

I'll show you the letter that I'm referring to and perhaps we can go from there.

COMMISSIONER: Mr Boddice, would you have copies for my deputy and myself?

MR BODDICE: Unfortunately I don't, but as soon as the witness has identified it, it can be put on the screen.

WITNESS: I actually have one. 40

MR BODDICE: The witness has a copy of it, so perhaps if that could be put up on the screen.

MR DEVLIN: I have a second copy.

COMMISSIONER: We can share. Thank you.

MR BODDICE: You've seen this letter before?-- Only today. I could have seen it earlier. I have no particular recollection of it. 50

This was something that was raised - it's under the hand of Dr Buckland in his previous role as General Manager of Health Services, but it was a suggestion about, in effect, the Medical Board and Queensland Health being able to devise some system of accreditation for overseas trained doctors. Is that the case?-- Yes, yes.

1
And it spoke about action by Queensland Health, the Australian Government and the Medical Board being necessary in order to implement the proposal. Do you know whether that was advanced at all from the point of view of the Board?-- Yes, it refers to a meeting that took place between Dr Toft and Dennis Lennox and some others. I was at that meeting, and there was a report which - a draft report which Dennis Lennox had prepared which was - went into great detail about a lot of these matters that are referred to here. I remember generally there was agreement that these are good things, but - and in a practical way whether they could be implemented was a separate issue. I don't have any particular recollection of it going to the Board for any discussion. It remained a draft report, and my memory is that it was never promulgated to a final report. It did go to an AMA committee, on which I'm a representative, which discussed it, and again people agreed that these are worthy objectives, but whether they could be actually implemented, they were - that was a separate matter. But I don't have any clear recollection of what happened with this. It seemed to have just gone away.

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COMMISSIONER: Your recollection is that it remained a draft report?-- It was a draft report so far as I can recall.

MR BODDICE: I'll ask the witness to identify this. I understand this is the draft report that he was going to-----

COMMISSIONER: I was simply going to ask why did it remain a draft? Why was it never finalised? Do you know?-- Yes, that's the one. I had heard - just my recollection was that Queensland Health didn't want to pursue it.

30

MR BODDICE: You said it went to the AMA and there were concerns raised as to whether it could practically be implemented. Was that the case?-- It was discussed. This was just a working group that - myself and - on behalf of the Board - and various other agencies attended, and I remember it was discussed. Dennis Lennox was there. He presented it then. Various parties had their particular views. I think Immigration would have been there, Commonwealth Health. They all had their particular views on various aspects of it, but it was always inconclusive, and afterwards I never heard any more about it.

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And likewise, you said it didn't go to the Board, but you understood there was some discussion below Board level of the Medical Board in relation to it?-- Sorry?

Some discussion below Board level - at the Medical Board, this is - about the proposal?-- You mean a meeting with Dr Toft and-----

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Yes?-- -----Queensland Health? Yes, that was just a fairly low key sort of a meeting.

In these various discussions, was it the case that people raised concerns as to how it could be practically

implemented?-- Well, this is - the proposals were fairly complicated and complex and they were fairly, I think, resource intensive, and certainly those sort of issues were raised.

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As far as you're aware it wasn't taken further by really any of the parties?-- No. I mean, some of the proposals simply weren't ones the Board could address or were within its province to address.

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I'll tender that.

COMMISSIONER: Yes, indeed. The letter from Dr Buckland to Dr Toft of 8 September 2003 will be admitted and marked as Exhibit 27, and what's been described as the draft report of Dennis Lennox-----

MR BODDICE: Commissioner, that actually was, I think, an annexure to the letter I handed up. It was referred to, so it should probably be one exhibit.

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COMMISSIONER: All right. It will be one exhibit, and the letter is dated, as I indicated, 8 September 2003, and the draft report is described as the version of 13 August 2003. Mr Boddice, are you going to be shedding any more light on why this report simply remained a draft and wasn't finalised?

MR BODDICE: I'm hoping that I might be able to ask from the respective - from our side, yes, we will be shedding some light, but also from the other parties I'm hoping to find out.

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COMMISSIONER: Thank you. Those documents together will be Exhibit 27.

ADMITTED AND MARKED "EXHIBIT 27"

MR BODDICE: We have no further questions.

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COMMISSIONER: Thank you. If everyone will excuse me while I just catch up on the paperwork. Does anyone else have any questions?

MR DIEHM: Yes, I have a few questions, Commissioner.

COMMISSIONER: Yes.

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CROSS-EXAMINATION:

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MR DIEHM: With respect to Dr Patel, at all times that he was registered through the Board, he was registered as a Special Purpose Registrant. Is that right?-- That's correct

And he was registered as such for the purpose of surgery. Is that right?-- He was in surgery, so SMO in surgery.

10

Now, the one technical exception to that - as Mr Boddice has just been through with you, as had Mr Devlin - was that the second certificate that was issued did not include that reference to surgery that the first certificate included. Do you recall that?-- Yes.

But your evidence is that that appears to be a clerical oversight and that it should have included that reference in it?-- Which reference?

20

The reference to the purpose being surgery.

COMMISSIONER: Well, I suppose that depends on what form it takes, whether it's Senior Medical Officer in surgery or something else.

MR DIEHM: To be fair to the witness I'll go to the documents to make sure.

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COMMISSIONER: My recollection is that on the application for renewal of position it was described as "Director of Surgery - SMO." Is that something you would put on a certificate?-- No. We could do, but I don't think there would have been any necessity to do so.

MR DIEHM: The first certificate is the one which is Exhibit 31 to your statement?-- Yes.

10
It describes the special purpose activity as to practise as a Senior Medical Officer in Surgery?-- That's correct.

At Bundaberg Base Hospital?-- Mmm.

And the second certificate did not include that description of Senior Medical Officer in Surgery?-- That's correct.

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It being the certificate that is Exhibit 36?-- Mmm, that's correct.

But the omission of that phrase was, as you understand it, a clerical error?-- It was, because the document supports that the position was in surgery.

30
Thank you. Now, tell me, please, if these matters are beyond your knowledge or understanding, but with respect to the Medical Practitioners' Registration Act 2001, it prohibits, does it not, persons taking a specialist title that they are not registered for with the Board?-- That's the scheme of the act. It is a title protective model.

So, a person is not entitled - and whether they be a doctor or otherwise - a person is not entitled to take, for instance, the title of general surgeon unless they hold the special registration or specialist registration for general surgery?-- A surgeon is a restricted specialist title.

40
But an exception for that lies in the act, does it not, for somebody who holds a special purpose registration for the purpose of surgery?-- Sorry?

If a person holds, I'm suggesting to you, a special purpose registration-----?-- Yes, I understand.

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-----for the purpose of surgery, they are not prohibited from calling themselves a surgeon; is that right?-- If the person is a deemed specialist under section 143A of the act, I think it is, then, no, they are not - they are allowed to use the restrictive title.

COMMISSIONER: Was Dr Patel a deemed specialist?-- No, he wasn't.

What hoops would he have had to go through to become a deemed specialist?-- He would have had to have support from the Royal Australasian College of Surgeons and that's generally a process that's approached through the Australian Medical

Council and, with that support, he would have been granted his registration under section 135 to fill in an area of need and as a deemed specialist under section 143A.

1

Right.

MR DIEHM: Mr Demy-Geroe, with respect to the prohibition against taking a specialist title, that arises under section 158 of the act, does it not?-- Around about there, yes.

10

I'm testing your memory as to the detail of those things?-- I just go to the general-----

But the section that prohibits the taking of the title, I suggest to you, includes in it an exception where the person is registered as a special purpose registrant for a special purpose that involves the practice of the specialty?-- That's correct.

So, does that not mean that a person who holds a special purpose registration for surgery is not prohibited from taking the title of surgeon?-- A Senior Medical Officer in surgery is not necessarily a specialist surgeon.

20

Mr Commissioner, those are all the questions. The balance of my point will be a matter for submissions and I don't want to take it too far with Mr Demy-Geroe.

COMMISSIONER: Yes. Thank you. Mr Allen?

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MR ALLEN: Thank you, Commissioner.

CROSS-EXAMINATION:

MR ALLEN: Mr Demy-Geroe, I want to try and ascertain whether you are aware of some facts to then ascertain whether or not you may have received certain communications regarding the matter from Queensland Health. Now, on the 17th of December 2000, a female patient operated upon at the Charters Towers Hospital died whilst under general anaesthetic. The anaesthetist was the medical superintendent of the Charters Towers Hospital.

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COMMISSIONER: Pause there. Are you aware of the matters Mr Allen is talking about?-- No. If it concerns registration, I'm far more likely to be aware of it.

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MR ALLEN: All right. Would you, in the course of your normal duties, see correspondence from Queensland Health that was concerned with issues of foreign trained doctors generally?-- Yes.

COMMISSIONER: If it was addressed to the Board or to yourself or to the Registrar?-- Yes, of course.

MR ALLEN: Okay. And you are not aware of seeing any correspondence touching upon such a matter?-- On the activities of anaesthetist in the Charters Towers Base Hospital.

Yes?-- No, not to my knowledge.

Commissioner, could I hand up a document to yourself?

COMMISSIONER: Yes.

MR ALLEN: It is a matter which has been raised recently with counsel assisting. Given the matters contained in that document, I and my instructing solicitors are somewhat constrained as to taking the matter any further. I simply bring it to your attention, as I have to counsel assisting, as to whether it does require any further investigation from this witness or any other.

COMMISSIONER: I see. Mr Boddice, Mr Allen has brought to our attention issues at Charters Towers Hospital and make specific reference to a report from an internal Queensland Health investigation by a Dr Andrew Johnson and a Dr David Farlow dated 13 February 2001. I don't think I can take this matter any further without having a look at that report. I wonder whether, at the time of your convenience, you could have that report available for me to look at and I will hear anything further Mr Allen wants to raise in relation to that at the appropriate time.

MR BODDICE: Certainly.

COMMISSIONER: Is that satisfactory, Mr Allen?

MR ALLEN: Yes, thank you, Commissioner.

COMMISSIONER: I will pass that back.

MR ALLEN: Would I be able to give a copy of that letter to my learned friend to assist his inquiries?

COMMISSIONER: You can certainly give him a copy of your letter to me, but at the moment all I'm doing is inviting Mr Boddice on the behalf of his client to produce the report to the Inquiry and if I consider it is comprehended in the Terms of Reference or otherwise relevant, then we may take it further at that stage.

MR ALLEN: Thank you, Commissioner.

COMMISSIONER: Is that acceptable?

MR ALLEN: It is.

COMMISSIONER: Mr Boddice?

MR BODDICE: I was just going to ask for a copy of the letter,

that's all.

1

COMMISSIONER: You may have this copy back. Any more questions, Mr Allen?

MR ALLEN: Just a few, Commissioner. Do you have any involvement in the process of investigation of complaints regarding doctors received by the Medical Board?-- Complaints against doctors?

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Yes?-- No, I don't.

I see. There's a separate unit which deals with that?-- That's correct.

And the operations of that unit are not part of your responsibility?-- That's correct.

Okay. Thank you.

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COMMISSIONER: Anyone else at the Bar table? Mr Perrett, I include you in that, even though there's no room for you at the Bar table.

MR MULLINS: Yes, Commissioner.

COMMISSIONER: Yes, sorry, Mr Mullins.

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CROSS-EXAMINATION:

MR MULLINS: Mr Demy-Geroe, it is the case that the Medical Board is created by operation of the Medical Practitioners' Registration Act?-- That's correct.

And governed by the provisions of that act?-- Yes, yes.

40

The objects of that act contained in section 7 are to protect the public by ensuring health care is delivered by registrants in a professional, safe and competent way?-- That's correct.

To uphold the standards of practice within the profession; that's correct?-- Yes, that's correct.

And to maintain public confidence in the profession?-- Yes.

And that is done by the establishment of the Board; that's correct?-- That's correct.

50

Providing registration - providing for the registration of persons under the act; that's correct?-- That's correct.

And imposing obligations on persons in relation to the practice of the profession?-- Yes.

Is it the case that the Medical Board is the gateway through which any foreign medical practitioner must pass before they can practise medicine in Queensland?-- Yes.

1

And is it the case that-----?-- Sorry, it is one gateway. I mean, a visa is obviously required-----

That's two gateways. Let's set aside the visa for the moment.

COMMISSIONER: And also I assume that a medical practitioner can be registered in another state and then, although they have got to pass through the Queensland Board, that's then automatic under the Federal reciprocal-----?-- No, that's not strictly correct with Special Purpose Registrants. Special purpose activity is fairly - is focused on the activity in a particular location, usually, so if a New South Wales Special Purpose Registrant had registration specific to Orange, that couldn't readily be transferred to a Queensland location.

10

Does it occasionally happen that there's a Special Purpose Registration extends to, for example, Coolangatta and Tweed Heads or Goondiwindi and Boggabilla, or something like that?-- No, they require registration in both jurisdictions, but the mutual recognition arrangements wouldn't assist there.

20

Right.

MR MULLINS: I apologise. I missed the point. Did you say Special Purpose Registration in New South Wales would not automatically qualify a foreign trained specialist or medical practitioner to practise in Queensland?-- A Special Purpose Registrant in New South Wales, whatever they call it there - Conditional Registrar, I think - couldn't utilise the mutual recognition pathway to gaining registration in Queensland.

30

Does the visa application made by someone like Dr Patel have any medical qualification or assessment linked to it?-- Does a visa application?

Yes?-- I have no idea.

40

COMMISSIONER: Only in the sense that the applicant would need a sponsorship by an employer in the medical sector, I imagine?-- I don't know. I'm quite certain the Immigration Department wouldn't assess the medical competency of a practitioner seeking registration.

MR MULLINS: What organisation, other than yours, does an assessment of the medical qualifications of a foreign trained medical practitioner coming into Queensland before the person commences practice that you know of?-- I'm not aware of any.

50

COMMISSIONER: Again, sorry, I'm not trying to cut across your answers, but I suspect some of this depends on how you interpret the question. You understood the question to relate to a special purpose registration in Queensland?-- Yes.

If, for example, it was a person obtaining registration as a

specialist in Queensland, then obviously the appropriate college would be involved in scrutinising that application?-- Yes.

1

Is that right?-- Yes, that's correct.

MR MULLINS: What was the only gateway between Dr Patel and him practising surgery in Bundaberg Hospital? Was it the Medical Board?-- Yes. Surgery, in itself, isn't - practising surgery isn't, in itself, restricted to specialists.

10

No. The point is that you realised, when Dr Patel made his application, that you were the only gateway between him and surgical procedures at the Bundaberg Hospital?-- Yes, that's correct.

That's correct. Can I ask you to look at MDG14, which is Dr Patel's application? You advised us earlier in your evidence that this was the standard form application at the time?-- Yes.

20

It consists of four pages of handwritten documents - sorry, the first page is typewritten, and then three pages of handwritten completed documents?-- It is the form, yes.

The standard form is four pages?-- Yes.

Then a series of annexures to the form?-- Yes.

Can I ask you to turn to the second page? At the top of the page, we can see the completion of Dr Patel's personal particulars, that's correct?-- That's correct.

30

If we can move further down the page to qualifications on which the application is based, we can see the qualifications which Dr Patel puts forward?-- Yes.

And under, "Summary of the nature and extent of experience since qualifying as a medical practitioner", there appears to be two hospitals identified; that's correct?-- That's correct.

40

The first is the Millard Fillmore Hospital, and that seems to be at Gates Circle, Buffalo in New York; that's correct?-- That's correct.

Did anybody from your organisation, to your knowledge, contact the Millard Fillmore Hospital-----?-- No.

-----before Dr Patel was approved?-- No, we didn't.

50

Is there any reason why that hospital wasn't contacted to confirm the qualifications that he has set out in the application form?-- No. Well, there is a reason: it would be very time-consuming to pursue those sorts of inquiries.

How long do you consider it would take to find the telephone number for this hospital and then to contact them?-----

COMMISSIONER: Mr Mullins, I don't think that's a particularly fair question. The witness has been very frank in saying that it wasn't a practice to follow up on previous employers and referees and so on. You are more than entitled to make a submission in the future that that should be done, but I don't think taxing this witness with how long it would have taken is really very helpful. It is a matter for you, but I think we take the force of your point without having to have it drilled in too hard.

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MR MULLINS: Well, with respect, Commissioner, there appear to be five potential contactees who may have responded.

COMMISSIONER: Yes, and the witness has frankly told us that none of them were contacted. That's the system that operated at the time. Maybe in the future a new system will be devised and will be more effective.

MR MULLINS: Can I ask a few more questions?

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COMMISSIONER: Of course.

MR MULLINS: On behalf of the patients.

COMMISSIONER: Of course.

MR MULLINS: Do you accept that there were at least five potential contact points, being the Millard Hospital, the Kaiser Hospital, Dr Peter Feldman, Dr Singh and the Oregon Registration Board that could have been contacted and weren't contacted?-- They could have been. We had what we accepted as a Verification of Licensure from the Board, so it would have seemed superfluous to pursue that.

30

It would have been superfluous to pursue the Oregon Board?-- Yes.

What about the personal referees?-- The documentation on the file did present Dr Patel as a competent and experienced practitioner.

40

Are you personally engaged or involved in any way in employing staff at the Medical Board?-- Not directly.

Do you know whether the staff employed at the Medical Board had their references checked?-- Yes, that's a requirement for recruitment.

COMMISSIONER: And that's in the capacity of the employer?-- That's the employer's capacity.

50

So, the analogy you would expect to be is that you would expect Queensland Health to check references from its potential employees?-- Yes.

MR MULLINS: You have conceded that you are the only gateway between the patients at Bundaberg and Dr Patel, yet you didn't

check his references?-- That's correct.

1

What is your explanation to the patients for not checking his references?-----

COMMISSIONER: Well, I think we have heard it already. Is there anything else, Mr Mullins?

MR MULLINS: Just on the complaints procedure, you have mentioned that there is another part of your organisation that deals with complaints?-- Yes.

10

If a patient from the Bundaberg Hospital telephoned the Medical Board and made a complaint, is that complaint recorded?-- To my knowledge it is, yes. All complaints are logged.

You can tell me if you like, is this area outside your area of responsibility?-- Yes, it is outside my immediate responsibility.

20

Who is going to be able to help us with that?-----

MR DEVLIN: Mr O'Dempsey.

MR MULLINS: Mr O'Dempsey?-- Mr O'Dempsey, I would think.

MR MULLINS: What is the interrelationship between the reregistration and the complaints register?-- We have a computer system, Regis, where if there is a complaint received, it should indicate that that's the case.

30

So, as part of your protocol before reregistration, you check a complaints register to determine whether any complaints had been made to the Board?-- That should happen, yes. That should happen with any registration. There should be apparent that there's something happening.

Thank you, Commissioner.

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COMMISSIONER: Thank you, Mr Mullins. Anyone else at the Bar table?

MR DEVLIN: May I briefly re-examine on one matter?

COMMISSIONER: Yes, unless there is anyone with any other cross-examination. I'm going to say something to the members of the public present in the room and also the media: obviously there are solicitors and counsel and parties at the Bar table who have been given leave to appear in these proceedings and they all have the right to ask questions. That leave to proceed doesn't extend to the general public or the press or media, but if anyone present feels that there are issues that should be raised with this witness that haven't been raised, you are welcome to inform me of those matters that you feel haven't been sufficiently canvassed. Does anyone wish to raise anything that hasn't been adequately dealt with? All right. We will have re-examination.

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RE-EXAMINATION:

MR DEVLIN: Just in relation to the document introduced by Mr Boddice for Queensland Health, Exhibit 27, I put that back up on the screen, and I think we have some dot points in the document, Mr Demy-Geroe.

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COMMISSIONER: Do you still have that with you, Mr Demy-Geroe?-- Yes, I do.

MR DEVLIN: In your evidence, you made the comment that some of the measures canvassed in Mr Lennox's draft report were resource intensive. Going just quickly down the six dot points, it was suggested, you see, in the covering letter that for each overseas trained doctor, it be mandated as a condition of their special purpose registration that, firstly, there be accredited assessment by both the Board and a tertiary education supplier. Is that something that exists now?-- I don't know which - what tertiary education supplier would be available to undertake assessment - how that body would be accredited and which body would have the capacity to do it in volumes that are necessary.

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COMMISSIONER: Mr Demy-Geroe, I might be able to help you on this. I actually used to sit on the Barristers Board and the practice there was if we had a person of international qualifications and we weren't aware of a particular university or the course involved, an arrangement existed with the law faculty with the University of Queensland that they would review the curriculum or the syllabus for the course and provide advice to the board as to whether the international degree was comparable with an Australian law degree. That seems to be the suggestion here, that if there's any doubt about the comparability of the degree, then you could get a university to compare the relevant qualifications and advise whether they are, in fact, of the same standard?-- Yes, well, one of the problems I have with this list is I'm not quite sure what the intention is. I'm not sure what the purpose of the accredited assessment is. Is it an assessment of performance, an assessment of their qualification, or something else, or a combination of those. It is not really clear. But the identity of such a body doesn't leap to mind, and I don't know how many barristers or lawyers the Law Society would have been dealing with, but I suspect that they wouldn't have been anywhere near the numbers that would arise out of this.

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You are perfectly right. It was the Barristers Board and there might have been a maximum of half a dozen applicants each year?-- I think the Medical Board used to use similar processes, but the numbers have far outpaced that.

MR DEVLIN: That was my question to you. Is that one of the

aspects that would have been resource intensive, given the through-put of applicants for Special Purpose Registration that the Board deals with?-- Yes. Well, it would have been resource intensive. Again, I would have to come back. I simply don't know who would have done it.

1

The second one, accredited preparation for employment accredited by a tertiary education supplier, again is that one of those resource intensive issues?-- No, well, there is a body within Queensland Health or affiliated with Queensland Health - I'm not quite sure what the relationship is - that could do that. Again, I'm not sure to what standard or who would have accredited that preparation for employment process. As I understand it, there is such a program that's run. It is a voluntary participation type thing. It has - serves a useful function, but it deals with very small numbers.

10

Very well. Point number 4, case management of status relating to security checking, registration, immigration and Medicare provider number status, and trailing spouse and family issues?-- I can't see that's within the province of the Board's responsibilities.

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Right. Number 5, professional career advice?-- Sorry, back to the other one - apart from registration, which is case-managed in any event.

Yes. Number 5, professional career advice?-- I don't think the Board's equipped - resourced to take on that sort of role.

30

Finally, accredited bridging course towards vocational recognition in Australia?-- I'm not sure what the suggestion is there. I mean, the Board's preparedness to accredit - to mandate for each registrant as a condition of their accredited bridging course towards vocational recognition, we certainly encourage that. The conditions that we were able to impose have to be directed towards ensuring competence and safety in their professional practice - competent and safe professional practice. So, whether that could be regarded as being a legitimate condition that the Board could impose, I'm not sure.

40

Would to mandate such an arrangement be a resource issue, though, that would have to be tackled, given the number of applicants?-- Again, yes. Towards vocational recognition, I think the focus was on GP training, and I'm not sure how many places would be available for that purpose.

Thank you. I have nothing further of the witness.

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COMMISSIONER: Mr Andrews?

RE-EXAMINATION:

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MR ANDREWS: Mr Demy-Geroe, do you know what comparisons there are between the conditions that are imposed here in Queensland on overseas trained doctors-----

COMMISSIONER: Sorry, Mr Andrews, we might actually take the 10 minute afternoon break, if that's convenient. I didn't know how long you were going to be.

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MR ANDREWS: Probably 10 minutes or so.

COMMISSIONER: We will take a break now and resume in 10 minutes.

THE COMMISSION ADJOURNED AT 3.28 P.M.

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THE COMMISSION RESUMED AT 3.41 P.M.

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MICHAEL STEVEN DEMY-GEROE, CONTINUING RE-EXAMINATION:

COMMISSIONER: Mr Andrews, just before you do continue your re-examination, a couple of things have come up that I just wanted to ask the witness about, if I may. You mentioned at the outset that I think there are 13 different Boards which your organisation is responsible for, although you're personally only dealing with the Medical Board. Is my understanding right?-- That's correct.

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I believe that in addition to those 13 Boards there is also a separate registration system for nurses through the Queensland Nursing Council. Are you familiar with that?-- I - I know that that's the position.

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It has been suggested to us that the registration provisions or procedures adopted by the Queensland Nursing Council are rather more rigorous and efficient than those applying to other health care professionals. Has any comparison, to your knowledge, been made between the 13 Boards dealt with through your organisation and the systems used by the nursing council?-- I would imagine that our executive officers is well placed to make those comparisons. He is also the executive officer of the nursing council in a previous life.

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That's Mr O'Dempsey?-- That's Mr O'Dempsey.

Right. Thank you, Mr Andrews.

MR ANDREWS: Thank you. Are you in a position to contrast the requirements in the United States of America, the United Kingdom and Canada so far as registering overseas trained doctors is concerned?-- Am I able-----

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Contrast them with Queensland's? I am thinking in particular of some literature that suggests to me that in each of those three places there are some examinations that are required. Are you in a position to comment on that?-- All the comparable jurisdictions to Australia as a whole have entrance examinations for registration for permanent settlement.

We don't, do we, here in Queensland?-- Not for special purpose registrants. I don't know if there are similar types of registration - types - similar types of registration for areas of need in, for example, the United States. My understanding is that it is - how should I put this - it is such a desirable place to work and settle that people will go through the hoops to do it. And so as I understand it they don't have the sort of problems that we have.

50

Is it correct that the position in the United States is that one has some initial examinations and a requirement that an

overseas trained doctor undergo three years of residency, and then if they're prepared to go to an Area of Need after that period of residency, that they - their Visa may be extended so that they can do so?-- Could well be the case but I don't have any knowledge on that, I am sorry, Mr Andrews.

1

Now, as to Canada, are you able to comment on my uncertain understanding that for someone seeking to practise in an Area of Need in Canada, there must still be some examinations performed by an overseas trained doctor before being permitted to practise?-- Yes, I believe that's the case.

10

Within Queensland, the Medical Board is entitled to consider whether supervision should be a condition of registration for an overseas trained doctor going to an Area of Need?-- Should that be the case?

Yes, the Medical Board is entitled to impose a condition?-- Yes, and it does now.

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And it does now, did you say?-- Mmm.

Who is in the best position to explain to the inquiry what the current system is for requiring supervision? Is it something you can do or is Mr O'Dempsey likely to be-----?-- A super - Mr O'Dempsey could but I could. A supervisor is required to be nominated now with an application, the person has to be a general registrant or, in the case of a specialist, a consultant or a VMO.

30

That system didn't apply when Dr Patel sought registration, did it?-- No, there was faith in the system, in the hospital system.

The form 1, which was provided in the case of Dr Patel's application for registration is MDG16. I wonder if you would look at it on the monitor for me. Towards the bottom of the page, one sees some boxes on the left-hand side. One of them includes supervision available. I see that box hasn't been filled in?-- Uh-huh.

40

It - as I recall your evidence, you explained to us that it was implied in a registration for - as an SMO surgery for an Area of Need that there would be supervision?-- Mmm.

Um?-- I think in the hospital structure generally one expects that there is supervision at all levels.

This particular form has a space for setting out the supervision that's available. Ought that to be filled in by the applicant or the employer?-- Which form is this? The one-----

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The one you look at here, form 1?-- Form 1 is the employer or the applicant's? That's the applicant's - no, it is the employer.

I see that the employer signs it?-- One form is to be

completed by the applicant and one form is to be completed by the employer.

1

COMMISSIONER: That form says at the top "Form 1 Area of Need, position description. For completion by employer"-- Okay, I haven't got the top. So it is the employer's form.

MR ANDREWS: The employer didn't specify supervision available. In that respect, was that form 1 deficient or is that how they are regularly left?-- I think in the case of hospitals they are sometimes left like that, and at that time that wouldn't have raised any concerns because, again, as I have indicated, there was an expectation hospitals are a supervised environment.

10

Well, in a - as I understand the facts in respect of Dr Patel, it may be that there will be evidence to suggest that shortly after his engagement at Bundaberg, Dr Patel became the Director of Surgery?-- Yes.

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Which had the effect that he wasn't supervised by any clinician at all. Now, let's work on that as a hypothesis. If that hypothesis is correct, it would have been critical for the employer to fill in that "supervision available" box and for the Medical Board's subcommittee to have considered the amount of supervision available. Don't you agree?-- Yes.

So when considering what precautions might be taken for the future to ensure that adequately qualified and supervised persons are registered, it would be appropriate, do you agree, to ask particularly for details about the supervision that will be provided to anyone, for instance being registered as an SMO?-- Yes.

30

Now, would it be feasible for each annual reregistration application to require the applicant to obtain from the employer not simply a certification of the applicant's competent performance, but a certification as to the degree of supervision that the certifier has exercised. Now, to illustrate the practical example, would it be appropriate in a case such as this where it seems Dr Keating has certified at each annual reapplication, certified certain things about Dr Patel, would it be feasible to ask or to amend the form to allow Dr Keating to certify the amount of supervision he has exercised throughout the year so as to reveal how reliable Dr Keating's certification is?-- Yes, that's certainly feasible.

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And do you see some advantages in such an amendment to the forms?-- Yes.

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COMMISSIONER: Just talking about reregistration, as I understand it reregistration only applies to the special need situation where temporary registration is granted for 12 months and the applicant has to apply every 12 months to be renewed?-- Well, renewal of registration applies to every registrant. Renewal of Special Purpose Registration is a new concept and arises out of legal advice and reinterpretation of

the provisions for renewal contained in the Act.

1

Well-----?-- And that took effect from the beginning of this year, actually.

The ordinary - if I can use that word - the ordinary GP or specialist educated in Australia, practising in Queensland, registered with the Board has to renew his or her registration each year but there is no - no process of rechecking that person's credentials?-- No, no - well, with the Area of Need, obviously renewal is dependent on the special purpose remaining.

10

Continuing?-- Special purpose activity remaining.

It is just - and I raise it for discussion - before Mr Thomas in the Courier-Mail turned the blowtorch on the medical profession, he had a go at lawyers, and as a result of that some very useful reforms have been put in place, including the fact that all members of the profession, including now barristers, have to have annual practising certificates and part of that process is establishing to the satisfaction of the registration authority that one has done a certain amount of continuing legal education through the preceding 12 months. I take it there is nothing like that for the ordinary registrant, the ordinary GP or specialist educated and practising in Queensland?-- The legislation provides for renewal but not for special purpose registrants - for general registrants, specialists - for a recency of practice to be demonstrated, and that's something that the Board can take into account in determining whether a person should have their registration renewed. That's in the process of being worked out. The Act is still only new and there is a discussion paper out at the moment calling for submissions on how that's best going to be achieved.

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One possibility is that if the medical practitioner is old enough, he or she could still be describing leeches or bleeding the patient without any ongoing education, and under the present system would qualify for renewal year after year as long as-----?-- That was certainly the old system. The old system was once you were in and you paid your fee annually, you were always in. But it is - the new legislation does take into account that practitioners must maintain a professional standard, must maintain their education.

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Right?-- They certainly must continue to practise.

Thank you.

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MR ANDREWS: Within the certificates of registration special purpose, section 135 forms from the Medical Board, I see that for Dr Patel there was never included a condition of supervision by the employer for a period of 12 months. If there was to be included a condition of supervision, would it appear in the certificate of registration? An example would be MDG31?-- Sorry, where - what was the question?

Had there been a condition imposed that this registrant be supervised, would one normally expect that condition to appear in that certificate?-- Yes, I mean, it could take two forms. It could be a specific condition requiring supervision by a specified person, or it could be simply - it could simply form part of the Area of Need activity, special purpose activity.

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COMMISSIONER: Special purpose activity could read "to practise as a senior medical officer under the direction of a surgical specialist"?-- Or a particular person, "under the supervision of Dr Keating", or any other person for that matter.

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Or alternatively there could be a condition under a separate subheading and the condition is that the medical practitioner must practise under that form of supervision?-- Yes.

MR ANDREWS: This particular certificate, would it be - are you able to say whether it should be read and understood by any Director of Medical Services as containing a condition of Dr Patel's registration that he should be supervised during that period of registration?-- No, it doesn't say that but, as I have said previously, there was an expectation from the Board that positions are hierarchical in a public hospital situation and everyone is supervised at some higher level.

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COMMISSIONER: I think what Mr Andrews is asking is whether you would expect a medical superintendent to understand that that was the Board's expectation, that when the Board says a person may practise as an SMO, the Board expects that that person will have supervision?-- It is not spelled out. That's all I can say.

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MR ANDREWS: Now, it would be feasible to spell it out so that even the Director of Medical Services would know what the Board's condition was?-- Yes.

And it would be feasible to do that with certificates of registration for the future, wouldn't it?-- Certification of registration and the letters that go out accompanying them, yes.

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And, indeed, would you agree that ought to be done in future if the Board does have an expectation that the registrant will practise supervised?-- Would that be my expectation?

If the Board has an expectation that the registrant should practise supervised?-- Yes.

It would be feasible and, indeed, appropriate for the future if the Board specified that as a condition?-- Yes.

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That would avoid any prospect that a Director of Medical Services could be confused about the need for supervision?-- Yes.

I have no further questions, thank you.

COMMISSIONER: Thank you, Mr Andrews. Thank you very much for making your time available to come along. It hasn't escaped our attention that you have obviously put a lot of work into preparing your evidence and our thanks also go to your - I should say to the Board's solicitors and counsel for presenting your evidence in such a coherent and helpful way. And, as I indicated earlier, I think it is particularly important to note that the Board, or that you in your capacity, have acknowledged that there are things that should have been done better, and expressed a preparedness to ensure that those problems don't occur in the future. I think that will at least be some comfort to a lot of people, that you in your position are prepared to make that acknowledgement and to take steps to address it. So thank you very much for your attendance here today?-- Thank you, Mr Commissioner.

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WITNESS EXCUSED

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COMMISSIONER: Who do we have next?

MR DEVLIN: Mr O'Dempsey is available.

MR ANDREWS: Yes.

COMMISSIONER: Is it sensible to start Mr O'Dempsey this afternoon?

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MR DEVLIN: Yes. If I can lead some matters from him, I think we can usefully cover some ground.

COMMISSIONER: I will ask Mr Andrews to formally call Mr O'Dempsey and we will take it from there.

MR ANDREWS: I call James Patrick O'Dempsey.

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JAMES PATRICK O'DEMPSEY, SWORN AND EXAMINED:

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COMMISSIONER: Thank you, Mr O'Dempsey. Please take a seat.

MR ANDREWS: Mr O'Dempsey, what's your full name, please?--
James Patrick O'Dempsey.

And do you have with you a two-volume copy of your statement
with annexures?-- I do.

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Are the opinions expressed in that statement opinions honestly
held by you?-- They are.

And are the facts asserted in that statement true to the best
of your knowledge?-- Yes.

I tender those two volumes.

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MR DEVLIN: I have the originals.

COMMISSIONER: Thank you so much, Mr Devlin. The statement of
Mr O'Dempsey will be admitted into evidence and marked as
exhibit 28.

ADMITTED AND MARKED "EXHIBIT 28"

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COMMISSIONER: As I indicated this morning in relation to the
statement of the previous witness as an exhibit, that
statement will be placed on the Commission of Inquiry website
but it may not include all of the attachments, which are
obviously very voluminous. If anyone from the press or media
or, indeed, from the general public wishes to see any of those
attachments, they are more than welcome to contact the
Secretary, and I understand we have facilities to make that
available on disk or in an electronic format. Thank you,
Mr Andrews.

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MR ANDREWS: Commissioner.

EXAMINATION-IN-CHIEF:

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MR DEVLIN: There is, in respect of exhibit 28, one
application for a non-publication order pursuant to section
16A of the Commissions of Inquiry Act. That's in relation to
paragraph 30, which recites the meeting with the Queensland
Nurses' Union representatives in which the alleged concerns
about another practitioner were the initial cause for the
meeting. I see that the practitioner is named at the forth

last line of paragraph 30 and again, I believe, in another paragraph. Perhaps in the subsequent paragraph, 31.

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Because the concerns are, as I understand it, unrelated to the subject matter of this inquiry, I wonder if I could arrange for those pages to be substituted expunging the name of the other practitioner?

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COMMISSIONER: Well, I don't think there's any need to do that. I will make a non-publication order in respect of the name of the medical practitioner referred to in the fourth last line in paragraph 30 of Exhibit 28, the statement of Mr O'Dempsey.

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MR DEVLIN: And the second line of paragraph 31.

COMMISSIONER: It's the same medical practitioner, yes. In both places the non-publication order will apply, and when this goes on the Internet I'll ask for steps to be taken to obliterate those names so they can't be read on the website copy. Does that cover your concern?

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MR DEVLIN: Thank you.

COMMISSIONER: Mr Andrews, are you comfortable with that form of order?

MR ANDREWS: Yes, thank you.

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COMMISSIONER: Thank you.

EXAMINATION-IN-CHIEF:

MR DEVLIN: Mr O'Dempsey, when did you assume the role as Executive Officer of the Office of Health Practitioner Registration Boards in an acting capacity?-- March 2002.

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And when did you assume full-time control as Executive Officer?-- February 2003.

Now, in your statement you have set out the legislative framework in which the Office of Health Practitioner Registration Boards now operates, that is from paragraphs 5 onwards. Is that right?-- Yes.

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I should ask you this: there was some reference this afternoon to you being Executive Officer of the Queensland Nursing Council. When did you occupy that position?-- '93 until 2002.

Now, to take up the Commissioner's observations or questions of Mr Demy-Geroe about any comparison between the method for registering nurses and registering medical practitioners, are you able to offer some detail in respect of that or is your knowledge of the QNC proceedings somewhat dated now?-- It's dated, but I could offer a number of comments. One, the legislation provides for delegation from the full Council to relevant staff and officers of the Council whereas the legislation Registration Act for the Medical Board is very limited. It cannot delegate decision making in terms of registration. So that engenders a more definitive approach in defining policy and procedure which applies for the

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accountable officers or the delegatee to actually make the decision. I think the second point that I'd make is that there is no Area of Need registration category. You either meet the requirements for registration or you do not. There is no national examination process similar to the Australian Medical Council. From my knowledge of 2002, the national assessment was a paper based assessment and because of that, and because of changes in source countries, particularly for registered/enrolled nurses, the Council introduced its own examination process. So I think that there are some differentiating factors, some that are quite significant, both legislatively and on a policy basis.

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Thank you. Have we reduced to schedule form then, looking at the structural issues created by the legislative framework, the various Acts which commenced around about early 2002 which govern the operation of each of the various boards?-- We have.

I'll tender for the Commission that schedule.

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COMMISSIONER: Is that different from the list on pages 3 and 4 of the statement?

MR DEVLIN: No, it's not.

COMMISSIONER: Thank you.

MR DEVLIN: Have you got a copy of that, Mr O'Dempsey?-- I have.

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I just wanted to ask you then about the structure. Can you give us some idea of the change that has come about in the area of these particular Health Practitioner Registration Boards since the legislative scheme changed so markedly in and around 2002?-- Maybe it even pre-dates 2002. The initial - all the legislation - or the legislative scheme ensues from a 10 year review of regulation of health practitioners undertaken by Queensland Health, and out of that review three key pieces of legislation to be developed - the Professional Standards Act, the Administration Act - and I haven't used their full titles because they're quite a mouthful. I should. The Health Practitioner Professional Standards Act (1999), the Office of Health Practitioner Registration Board Administration Act (1999) and each of the 13 Registration Acts and their regulations. There was significant change required under the Professional Standards Act, under the Administration Act, and under these 13 Registration Acts and their regulations - and I say this without trying to assign any blame to individuals or groups, but there was a significant lack of planning for their implementation, particularly at a strategic level. So that the organisational direction and goals weren't established for the Office on its establishment. There were limited - there was limited availability of facts and data to make decisions through modern information capture, and there was no engagement of stakeholders in actually helping define the significant issues that had to be addressed by the regulatory authorities, and that led to an organisation

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that was staffed with resources that were - saw themselves as servants to the Boards rather than as a professional advisory and service provider organisation, and also to a structure of solo based teams where there was no based - or limited interaction, and no sharing of knowledge. What we've attempted to do as an organisation since 2002 is to clearly establish a direction and a focus on goals, and engage in activities to achieve those goals, and to work on the - sorry, to improve the outcomes that were being delivered both by the Office and the Boards by focusing on improving the systems and the policies and the procedures.

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Have you attempted to set that out at paragraph 9 of your statement?-- I have.

Now, coming right to the point, since 2002 - sorry, at paragraph 9 near the bottom you've talked about the removal as far as possible of human error in the registration process. What is there about the registration process now in place in the Office of Health Practitioner Registration Boards which would go towards eliminating the human error that Mr Demy-Geroe spoke about this morning?-- There are some specific initiatives that the Board has already put into place. There are some that are planned to be put into place and others that require further negotiation. From mid to late April the Board established a Special Purpose Registration Assessment Unit. That was staffed with four staff members in addition to the registration team, at that time led by Mr Demy-Geroe. It's staffed by three administrative officers and a senior assessment officer. What that structure will do will ensure that the three administrative officers have sufficient time to review the number of documents that are coming in and ensure that the application is both accurate and complete. But more importantly, they then have to refer that completed application to their senior officer, who is at the A06 level, who checks that it is accurate and complete. That was a failing back in 2003. No-one had the specific responsibility to close that quality loop, and that position is now responsible for then putting to the Registration Advisory Committee, and ultimately to the Board, the completed application file.

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You mentioned before the delegated capacity for staff members of the Queensland Nursing Council to process and approve applications for registration by nurses, if I understand you correctly. Do you favour that as an approach here? Because we've heard this morning that the Registration Advisory Committee, a committee to the Medical Board of Queensland, is called upon during peak periods to process up to 150 or 200 applications in a sitting before they then go to the Board for endorsement. Do you see that as the model or do you see any room for improvement there?-- We've already initiated some improvement there by seeking a delegation, and I said initially that there was limited delegation ability under the Act. There is an ability to delegate the decision to renew on application for renewal, and Mr Demy-Geroe referred to it earlier, but the Board has given such a delegation to his

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position and my position and his assistant Registrar's position. So - in order that within certain policy framework we can approve the renewal or the application for renewal of Special Purpose Registration. So that's decreased the significant workload for the Registration Advisory Committee from the beginning of this year.

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Is there nevertheless a capacity to refer matters that need to be considered in view of the assessors?-- That's within the delegated authority. If there is an issue it is to be referred to the Committee for consideration.

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COMMISSIONER: And those things are defined by the guidelines?-- Yes, by the delegation.

Yes.

MR DEVLIN: We heard something from Mr Demy-Geroe later this afternoon about the implementation of supervision of overseas trained doctors who do come on the Area of Need Special Purpose Registration. Can you tell us a little more about that briefly?-- We've made some changes - or the Board, I should say, has made some changes over the period from 19 April. Firstly, we advised all recruiting agents that they had additional responsibilities in terms of ensuring that their applicants sought Certificates of Good Standing from every jurisdiction in which they practised and in their training jurisdiction, and that they were to be provided to the Board on a Board-to-Board basis rather than through the applicant and through the recruiting firm. We also require them to certify that they've undertaken reference checks and specified the types of questions that must be asked in terms of history of disciplinary action, and also specified the types of referees that are acceptable. For example, we must have the person who was their immediate supervisor in the employment, and in the immediate past employment setting.

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So that's a more targeted seeking out of referees?-- Oh, absolutely. In terms of supervision, the Board carried a resolution on, I believe it was the 26th of April, requiring supervision by VMO - that's Visiting Medical Officer - or a staff specialist of anyone engaged as an SMO, Junior House Officer, Principal House Officer providing specialty practice activities under their Area of Need.

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COMMISSIONER: Mr O'Dempsey, everything you say sounds tremendously useful, but I'm a little concerned - or perhaps I should say apprehensive about the idea of having the recruitment agencies undertake the reference back to referees. It strikes me that the recruitment agencies really have a bit of a conflict of interest. They're paid, in many cases very substantial amounts of money, to ensure that a person fills a vacancy, and it would strike me as more rigorous if your organisation had the resources to make those inquiries on its own behalf?-- I think it's a resource issue, a timing issue about how far you go back, and the legislative framework in terms of the time for decision making which is quite prescriptive under the Registration Act. So there are other

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issues that would need to be addressed if that was the case, particularly the funding issue, as the Boards are only funded through registration fees imposed on doctors at the moment.

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Yes.

MR DEVLIN: Now, you spoke about-----

D COMMISSIONER VIDER: Mr O'Dempsey, could I just ask you a question further to the last statement you make about supervision and the changes that have been made there? You've now said that there are nominated VMOs or staff specialists that have to be able to provide supervision. Have you changed the formatting or the reports that would come in so that the reports and the clinical assessments that would be given of the practitioner could come from that person?-- That's an item for discussion at our next steering committee meeting for implementing these changes, Commissioner.

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Thank you?-- This is an interim step. The Board's resolution of 26 April. It also required the supervisor to immediately advise the Board if there was an adverse incident or adverse report of any nature received during the course of their employment. That's to give us sufficient time to negotiate an appropriately structured model of supervision in reporting with Queensland Health, AMA, and the specialist and non-specialist college, because it's going to be critical that the colleges, and Queensland Health, are involved in setting up this appropriate structure.

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But it also gives you the direct communication link between the assessor and the assessee?-- Yes, and we've required Form 1 to include both the nominated supervisor and the type of supervision that's going to be provided by that nominated supervisor.

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COMMISSIONER: And are these recent reforms you're talking about at least partly inspired by the Patel situation?-- They're partly inspired by it - primarily inspired by it, but they were matters on our agenda anyway. We have been moving to tightening the processes for Area of Need registration specifically and registration process in general for at least the last two years. So we've moved ahead some initiatives and we've taken opportunity with this particular horrendous issue to actually achieve an outcome.

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Would it be an overstatement then to say that the Patel situation has been a bit of a wake-up call for the Board, and that maybe these things are being fasttracked when they would otherwise have been introduced more slowly and methodically?-- From my knowledge the Board has always been concerned about Area of Need and they're growing increasingly concerned, but there was also recognition that if it moved too quickly to implement change, then - and the other states lagged behind, then we would dry up applications for registration in Queensland, and we've been negotiating to get national initiatives in place like the English language test and the national screening exam which is being piloted at the moment,

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and national online primary source verification. So it's been getting that balance right between resistance for change within Queensland and ensuring that the other states and territories supported us in that direction.

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And in the limited time that these initiatives have been in place, have you encountered any pragmatic problems; for example, have hospitals said, "Well, we can't make a supervisor available.", or those sorts of practical issues?-- We haven't got to that situation at the moment because the Board hasn't made a decision on a new applicant-----

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Yes?-- -----since it carried that resolution, because we have issued section 46 notices to get their Certificates of Good Standing from every jurisdiction in which they have ever practised. So, we have got some room at this stage.

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Thank you.

MR DEVLIN: In terms of the initiatives, you spoke of some future initiatives as well. I don't think we have canvassed those yet. Can you canvassed them briefly?-- The initiatives I mentioned briefly was a clinical assessment - sorry, I should step back. There's a national screening examination which we are developing on a national level in partnership with the Canadian authorities, and that is a safety screen. It tests safety knowledge and will give indications that they have actually undertaken a course that prepares them for practice in Australia. We will be doing online primary source verification of their qualification, and I should say that is checking the degree that they provide us with is the degree that's issued by the institute or educational institution that they have graduated from, and we are doing that with the credentialling service in the US because they have copies of most degrees issued by most medical schools throughout the world for at least the last 70 to 80 years and they do a physical match on their records which have already been verified at source.

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COMMISSIONER: Did you say 70 to 80 years?-- Yes.

It is unlikely you would often have to go beyond that?-- I believe that there are new schools growing up in previous Russian satellite countries, so there may be, but what they also assure us is if they don't hold that primary document - a copy of that primary document on file, they will go back to the institution and get them to verify. That then becomes the primary document, I believe.

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Mr Devlin, if that's a convenient time, we might leave it there. As we know, we have Dr Molloy scheduled for 4.30, is it, tomorrow afternoon?

MR ANDREWS: I understand so, yes.

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MS GALLAGHER: That's correct, Commissioner.

COMMISSIONER: How are we coming along with Dr Molloy's statement.

MS GALLAGHER: We are intending to be in a position to deliver that tomorrow morning.

COMMISSIONER: Will you be able to send it directly to the legal representatives for each of the other parties, or is it better to send it to us to disseminate?

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MS GALLAGHER: We formed the view to give it to Mr Andrews in disk form and thereafter to be disseminated, if that was acceptable.

MR ANDREWS: That's acceptable.

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COMMISSIONER: Well, Mr Devlin, I certainly don't want to inconvenience Mr O'Dempsey. If we resume at, say, 2.15 tomorrow, would it be your expectation that we will be finished with Mr O'Dempsey and in a position to go on with Dr Molloy's evidence at 4.30?

MR DEVLIN: Yes, I'll have to check on Dr Cohn's availability. She was available throughout tomorrow, but I'll need to reassess that and let the Commission know.

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COMMISSIONER: I'm entirely happy for you to make whatever arrangements are mutually convenient for her and Mr O'Dempsey. If it is more convenient for Dr Cohn to come in tomorrow and Mr O'Dempsey to come back on Wednesday, I have no difficulty with that at all.

MR DEVLIN: Thank you.

COMMISSIONER: I assume no-one else would have a problem if we interpose Dr Cohn in that way?

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MR ANDREWS: No.

COMMISSIONER: All right. The other thing I was going to raise is this: Deputy Commissioner Vider and I were speaking earlier that a lot of the evidence we have heard today about the operation of the Medical Board is, we think, very useful not only in relation to those parts of the Terms of Reference which relate to the Medical Board, but given that Sir Llew Edwards is, to use the American term, recused from dealing with issues relating to the Medical Board, I wonder if anyone would have any objection if Sir Llew sits in during this evidence so at least he can hear what is said and the information which he gains from that can be used in relation to other aspects of the Terms of Reference.

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MR DEVLIN: I certainly have no issue with that.

MR BODDICE: No, Commissioner.

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MR DIEHM: No, Commissioner.

MR ANDREWS: No.

COMMISSIONER: I can't guarantee he will be here, but I think it is useful that he have the opportunity to be present and hear that evidence if he chooses to do so.

MR DEVLIN: Certainly.

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COMMISSIONER: Thank you. Yes, Mr Boddice?

MR BODDICE: Commissioner, just in relation to that report-----

COMMISSIONER: Yes.

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MR BODDICE: I have a copy. On my instructions, one has already been provided to the Commission on the 19th of May in response to a particular summons, but, for convenience, we can hand it up.

COMMISSIONER: That's quite possible. It hasn't come to my attention yet. Just remind me, this isn't the Lennox Report, is it? This is the Johnson report about the -----

MR BODDICE: The matter that our learned friend Mr Allen raised.

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COMMISSIONER: Yes, Mr Allen's point about Charters Towers.

MR BODDICE: Yes.

COMMISSIONER: Anything else before we rise? No? All right. We will adjourn now until 2.15 p.m. tomorrow afternoon.

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THE COMMISSION ADJOURNED AT 4.31 P.M. TILL 2.15 P.M. THE FOLLOWING DAY

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