

COMMISSION OF INQUIRY NO. 1 OF 2005
MEDICAL BOARD OF QUEENSLAND

This is the annexure marked "**MDG-3**" mentioned and referred to in the Statement of **MICHAEL STEVEN DEMY-GEROE** dated this 17th day of May 2005.

MEMORANDUM

TO: JIM O'DEMPSEY, EXECUTIVE OFFICER
FROM: MICHAEL DEMY-GEROE, DEPUTY REGISTRAR
DATE: 13 APRIL 2005

Subject: Registration of Dr Jayant Patel

1. Preamble

This report sets out the circumstances of the approval of special purpose registration for Dr Jayant Patel, in light of revelations that he had in fact been subject to disciplinary action in two American States prior to seeking registration in Queensland. Proposals aimed at preventing a reoccurrence of such an incident are also included.

2. The Initial Application

- 2.1 Dr Jayant Mukundray Patel was registered by the Board on 11 February 2003, upon recommendation from the Registration Advisory Committee, as a special purpose registrant to fill an area of need as a senior medical officer at Bundaberg Base Hospital. Registration was to be effective from 1 April 2003.
- 2.2 Dr Patel submitted documentation with his application attesting that he held a 1973 primary medical degree from Saurashtra University in India, as well as a 1976 Masters degree in surgery, also from Saurashtra. According to the documents, Dr Patel had subsequently undertaken internship and residency in surgery at Rochester University School of Medicine, New York, between 1979 and 1981, and residency in surgery at Buffalo, New York, until 1984. He also provided evidence that he had obtained certification from the American Board of Surgery in 1988, and was recertified in 1996.
- 2.3 Dr Patel's application was submitted on his behalf by a reputable Sydney based recruiting agency, Wavelength Consulting Pty Ltd. An original Verification of Licensure certificate, from the State of Oregon Board of Medical Examiners was submitted by Wavelength on 29 January 2003, following a faxed copy which had been sent a week earlier. Dr Patel had been registered in Oregon in the specialty of general surgery since 1989.
- 2.4 Dr Patel's application was signed by him and contained the usual fitness to practise declaration. Of particular relevance are statements 3 and 4 which he answered in the negative:
3. Have you been registered under the *Medical Practitioners Registration Act 2001* or the *Medical Act 1939* (repealed) or have you been registered under a corresponding law applying, or that applied, in another State, or Territory, or a foreign country, and the registration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?

4. Has your registration as a **health practitioner** ever been cancelled or suspended or is your registration currently cancelled or suspended as a result of disciplinary action in any State or Territory or in another country?

3. **Renewal of Registration**

- 3.1 Dr Patel sought a further term of registration by application received on 11 December 2003. He again made the required declarations, and indicated also that the position he was now filling was Director of Surgery, Bundaberg Base Hospital. The Director of Medical Services at the Hospital provided a performance assessment report of Dr Patel's past service in accordance with Board requirements, which indicated better than expected results in all areas, except emergency skills and medical record keeping, which were nevertheless assessed as 'consistent with level of experience'. The required Form 1 (employer's position description) indicated the following requirements for appointment to the area of need vacancy:

"To provide Surgical Services to Outpatients and Inpatients presenting to the Bundaberg Base Hospital. To assess patients presenting to Surgical Clinics. To operate in theatre. To participate in 'on-call' roster overnight and weekends in conjunction with Staff Surgeons. To educate and guide junior medical staff at ward rounds, clinics and in theatre. To provide education sessions to medical students regarding surgical presentations. Dr Patel has been in this role for the past 12 months and his performance is rates (sic) as excellent."

- 3.2 A further 12 month period of special purpose registration was subsequently approved for Dr Patel by the Board at its meeting on 27 January 2004.
- 3.3 Dr Patel again sought renewal of his special purpose registration on 7 February 2005, under revised arrangements for special purpose renewal. Informal concerns had however been raised regarding Dr Patel's performance at Bundaberg Base Hospital, specifically during a meeting between the Executive Officer and representatives of the Queensland Nurses Union on 15 February 2005, and these were confirmed by Dr G FitzGerald on the following day as a result of his meeting with staff at Bundaberg Base Hospital. Following subsequent discussions involving myself, Dr FitzGerald and the Executive Officer, I declined to approve Dr Patel's application for renewal, as a Board delegated decision maker for such applications, and deferred it instead for discussion by the Registration Advisory Committee upon receipt of substantive information on the allegations concerning Dr Patel's competence, either from Queensland Nurses Union or from another source.
- 3.4 On 24 March 2005, Dr FitzGerald in his capacity as Chief Health Officer, wrote to the Executive Officer drawing attention to concerns regarding Dr Patel's surgical expertise and judgment. Dr FitzGerald requested that the Board conduct an assessment of Dr Patel's performance at Bundaberg Base Hospital. As the Registration Advisory Committee was not scheduled to meet again until 5 April 2005, and media reports reflecting on outcomes of Dr Patel's surgical practice and competence were increasing, I instructed registration staff to ascertain the hospital's, and Dr Patel's, intentions with respect to continuing employment in the identified area of need vacancy.

- 3.5 On 30 March 2005 registration officer Duncan Hill sought confirmation of conditions which were understood to have been imposed on Dr Patel's surgical practice at the hospital, and also whether it was intended Dr Patel would continue to be employed. Mr Hill spoke with Mr P Leck, District Manager, Bundaberg Health Services District, who advised that Dr Patel had verbally indicated he would not renew a contract with the hospital from 1 April 2005. On 1 April Mr Hill again contacted Mr Leck and was advised that Dr Patel was still undecided on whether to continue at Bundaberg. Mr Leck however confirmed that Dr Patel was not employed by the hospital on 1 April 2005, and indicated he was in fact scheduled to leave the country on 4 April 2005.
- 3.6 As Dr Patel therefore was no longer entitled to renewal of registration, having ceased his approved activity, I instructed staff to seek withdrawal of the area of need certification for the position previously held by Dr Patel. Confirmation of cancellation of the area of need was received on 5 April 2005 from Queensland Health. Dr Patel's application for renewal of his special purpose registration was subsequently refused by the Board at its meeting on 12 April 2005.

4. Dr Patel's Undisclosed History

- 4.1 On 8 April 2005 the Executive Officer asked that I investigate Dr Patel's registration history in the United States, in particular whether there had been any past disciplinary issues given the statement on the Verification of Licensure certificate detailed below and the lack of attachment on the file. Upon reviewing the file it was immediately apparent to me that the Verification of Licensure certificate from the State of Oregon Board of Medical Examiners in fact contained the following notation:

"Standing: Public Order on File. See attached."

There was however no attachment with the Verification Certificate and this had clearly been overlooked by registration staff processing the documentation, and therefore had not been drawn to the attention of the Registration Advisory Committee.

- 4.2 An Internet search of the Oregon Board of Medical Examiners website with regard to Board actions concerning Dr Patel revealed 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."

- 4.3 The Oregon Board of Medical Examiners website contains the following definitions which clarify the notations as to standing appearing on the verification certificate and on the list of Board actions:

Public Order on file: The Board of Medical Examiners has taken action that has resulted in a Public Order, which relates to the licensee's right to practice.

Stipulated Order: 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."

- 4.4 The website of the New York State Office of the Professions was also searched and was found to contain the following information relating to Dr Patel:

“Effective Date:	5.10.2001
Action:	License 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.”

- 4.5 The notation *License Surrender* as defined by the New York Office of Professions means in this case that the licence had been surrendered pursuant to disciplinary action. Dr Patel had been charged with two violations arising from the disciplinary action in Oregon and by consent, it was ordered that his name be struck from the roster of physicians in the State of New York, effective 10 May 2001.

5. What Went Wrong?

- 5.1 Dr Patel clearly set out to deceive the Board in the response he gave in his initial application for registration regarding his past disciplinary history, and also in his subsequent renewal applications. The conclusion is also inescapable that the attachment to the verification certificate from Oregon, which detailed Dr Patel’s disciplinary history, had purposely been removed and withheld by him when the document was given to the recruitment agency for submission to the Board.
- 5.2 Dr Patel’s omission to disclose his past to the recruitment agency and his employer reveals similar deceptive conduct.
- 5.3 It is undeniable however that had a thorough check been made of the verification of licensure document, and the notation queried, Dr Patels’ registration is unlikely to have been approved, at least in an unsupervised setting. The oversight, while inexcusable, nonetheless might be regarded within the context of its occurrence. The officer who processed Dr Patel’s application is not currently employed by the Office and was in fact the Medical Team’s most experienced and reliable registrations officer at that time. All officers engaged in processing are routinely reminded of the importance of checking documentation for authenticity and any irregularities, as the Registration Advisory Committee could not be expected to undertake this responsibility. The Committee concentrates its efforts on the suitability of an applicant to engage in the special purpose activity the subject of the application, and does this through considering the particular skills and experiences disclosed in the curriculum vitae and the Forms 1 and 2 compared to the specifications of the area of need vacancy. Certificates of Good Standing and copies of other certificates of qualification are expected to have been passed as acceptable by the Office in accordance with the Board’s policies and guidelines, in the preliminary processing stage, and are generally not revisited at the decision making stage.
- 5.4 Some issues surrounding the Oregon certificate are also worthy of comment. Certificates of Good Standing are a traditional assurance tool used by registration authorities to assist in considering the fitness to practise of an applicant for registration. They follow a similar format in most jurisdictions internationally and contain a clear statement that the registrant is in good standing and not subject to disciplinary action or investigation. Conventional certificates of good standing are most commonly still passed directly between registration authorities. It is sufficient therefore to give such documents only a cursory review as the heading ‘good

standing' and the certification provide the information required.

- 5.5 United States medical registration authorities however generally do not issue certificates of good standing in the customary format. The verification certificate more commonly issued by US registration boards is a status report or statement of details from the register usually with no specific comment or certification. They often are given directly to the registrant and require more careful scrutiny as details can more easily be overlooked. Comments on the registrant's standing such as "*Public Order on file – see attached*" may not be as meaningful or conspicuous to processing officers as the absence of a certificate of good standing or a qualified certificate of good standing would be in other cases, although as already mentioned, the absence of an attachment should have, at the least, prompted some questions.
- 5.6 Another factor which might explain, as much as is possible, how such an oversight could occur is the sheer volume of registration activities with which registration officers must deal during the December-February peak period. Dr Patels' application was initiated in mid January with the receipt of an area of need certification, on 17 January 2003, and the form of application with supporting documents three days later. During January 2003 a total of 233 area of need special purpose applications were approved, and 104 were approved during February 2003. At that time area of need applications were prepared for the decision making stage by 1.4 FTE AO3 level officers. Registration officers must deal with constant pressure from agencies, applicants and employers seeking to expedite applications, and this adds to the substantial workload in peak periods. Constant interruption and distraction from the task at hand obviously is conducive to errors occurring.
- 5.7 It is my view that a combination of circumstances coincided in this case with unfortunate consequences. These were firstly, the intention of the applicant to mount a deception; secondly the nature of the American certificate which tended to obscure the vital information within the document's format and through use of unfamiliar terminology; thirdly, the oversight by the processing officer; and lastly, the workload pressures under which registration staff were functioning at the material time.

6. Learnings

- 6.1 An incident such as this provides an opportunity to reflect on the effectiveness of procedures in place and to consider any changes which might ensure the circumstances which arose in this case cannot reoccur. No procedures, of course, can guarantee against human frailty and effective procedures are also limited by such factors as cost and practicality.
- 6.2 As a procedural step I propose that as a general principle the Medical Board refuse, in future applications, to accept assurance documents such as certificates of good standing, licensure verification certificates, confirmation statements, status certificates and certificates of professional conduct unless received directly from the issuing registering authority. Some exceptions might be considered, for example, General Medical Council Certificates of Good Standing are often handed to the registrant but are printed on security stationery and are readily identifiable and difficult to falsify.

- 6.3 A workshop will be conducted with registration staff covering the history and intent of assurance documents, the roles of registration staff, Committees and the Board, and the serious consequences which could follow a failure to identify irregular or fraudulent documentation submitted with applications.
- 6.4 Recruiting agencies and employers will be reminded of their responsibility to undertake thorough reference checks of prospective applicants for registration in a consistent format to be developed. Agencies or employers not co-operating in this respect will find that applications will be considerably delayed while reference checking of applicants is undertaken.
- 6.5 The application fee structure at present does not differentiate between general registration applicants and special purpose registration applicants; that is to say, straightforward applications requiring a minimum of processing activity attract the same fee as those which could be expected to require more detailed attention. Other Australian jurisdictions do differentiate in this respect. It might be opportune to seek an amendment to the fee structure in order that appropriate resources for dealing with special purpose registrations can be ensured, particularly during peak period activity.
- 6.6 The US Educational Commission for Foreign Medical Graduates (ECFMG) International Credentials Service (EICS) provides international medical authorities with primary source verification of medical credentials of foreign doctors applying for registration in their jurisdiction. Use of EICS primary source verification services has been flagged in national initiatives for enhancement of the assessment processes of International Medical Graduates (IMGs). It is expected that following introduction of a national screening examination, as early as July 2006, primary source verification will commence, and this service is currently being negotiated between the ECFMG and the AMC. The Medical Board should not delay in utilizing this service and might explore an earlier inclusion of such a requirement for area of need applicants,
- 6.7 Registration staff will strive to ensure greater care is exercised when checking documentation:-
- Staff will need to ensure there are minimal interruptions while undertaking the checking process (e.g. answering telephones);
 - staff must allow adequate time for documents to be thoroughly checked (i.e. avoid sacrificing thoroughness in attempting to get an application to the next RAC simply because a complete application has been received or in the face of pressure from applicants, sponsors or agencies— the legislation does allow 60 days for the Board to make the decision).
- 6.8 The registration officer will highlight statements relating to good standing. This would focus attention of the registration officer to the relevant statement and provide an easy reference point for the decision maker.