

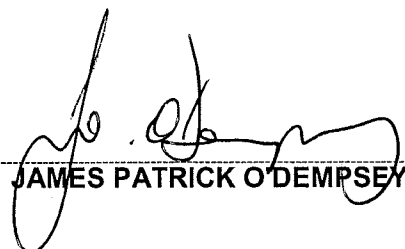
COMMISSION OF INQUIRY NO. 1 OF 2005
MEDICAL BOARD OF QUEENSLAND

Statement of:

Name:	JAMES PATRICK O'DEMPSEY
Address:	C/- Medical Board of Queensland, Level 19, 160 Mary Street, Brisbane, Queensland, Executive Officer, Office of Health Practitioner Registration Boards
Telephone No.: (W):	3225-2512
Mobile:	0404 867 434
Availability	Available as required by the Commissioner except 27 May, 2005 (meeting of Joint Medical Boards' Advisory Committee of the Australian Medical Council in Sydney) and 2 June, 2005 (meeting of the National Legislative Working Group in Melbourne.)

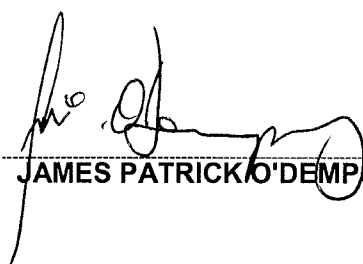
States:

1. This statement is made without prior knowledge of any evidence or information held by the Inquiry which is potentially adverse to the Board or its members, the Executive Officer of Office of Health Practitioner Registration Boards or its employees and in the expectation that any of the aforementioned will be afforded procedural fairness upon timely receipt of any notice of adverse allegation, or notification of evidence or information requiring the response of any of the aforementioned.
2. My full name is JAMES PATRICK O'DEMPSEY and I am the Executive Officer of the Office of Health Practitioner Registration Boards ("QHPRB"). Annexed hereto and marked "JPO-1" is a true copy of the notification of my appointment to this position as appeared in the Queensland Government Gazette No. 45 of 28 February, 2003. Prior to my appointment as Executive Officer I acted in the position for approximately 12 months on and from 4 March 2002. I have access to the books and records of the Medical Board of Queensland ("the MBQ") and I am authorised to make this statement on behalf of the MBQ. From the period of January 1994 up until my appointment as Acting Executive Officer of the QHPRB I held the position of Executive Officer of the Queensland Nursing Council.


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3. I have been a registered nurse in Queensland. I commenced my career in nursing at the Baillie Henderson Hospital at Toowoomba in 1978 and worked in a variety of hospital settings in both psychiatric and general nursing which included both clinical and managerial positions up until 1991. From 1991 to 1992 I was a project officer on the group responsible for implementing a state-wide nursing career structure. I became acting Nursing Officer of the Nurses Registration Board of Queensland from March 1992 to April 1993 whereupon I became Acting Executive Officer of the Queensland Nursing Council until my appointment to that body as the Executive Officer.
4. I have held or currently hold the following memberships:

Relevant Dates	Membership
1995 to 2002	Member, Royal College of Nursing, Australia
1978 to date	Member, Queensland Nurses Union of Employees
1996-March 2002	Member, Australian Nursing Council
1998-March 2002	Chairperson, Audit & Finance Committee, Australian Nursing Council
1999-September 2002	Chairperson, Advisory Committee, Queensland Centre for Evidence Based Nursing & Midwifery
2000-November 2002	Member, Faculty of Health Advisory Committee, Queensland University of Technology
November 2002 to date	Chairperson, Faculty of Health Advisory Committee, Queensland University of Technology
November 1993-March 2002	Member, Queensland Nursing Council and Member of the following committees of the Queensland Nursing Council: Corporate Services Committee - Registration Committee - Professional Standards Committee - Research Committee - Education Committee
October 1998-September 1999	Member, Ministerial Task Force on Nursing Recruitment and Retention
September 1999-March 2002	Member, Ministerial Task Force Implementation Group

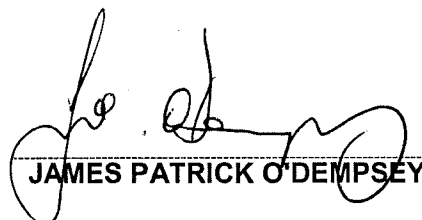


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A. LEGISLATIVE FRAMEWORK

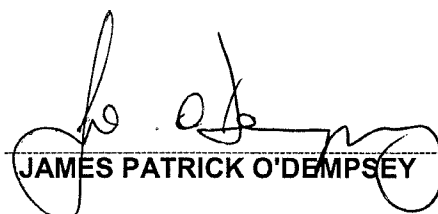
5. The QHPRB was established under the *Health Practitioner Registration Boards (Administration) Act 2000* ("the Administration Act") which commenced on 7 February, 2000. The main object of the Administration Act is "to establish administrative arrangements to help the health practitioner registration boards to perform their functions." (Section 3).
6. There are currently 13 Health Practitioner Registration Boards, including the Medical Board of Queensland which are provided service by my office pursuant to the requirements of the Administration Act. The other Boards are the Chiropractors Board of Queensland, the Dental Board of Queensland, the Dental Technicians and Dental Prosthetists Board of Queensland, the Medical Radiation Technologists Board of Queensland, the Occupational Therapists Board of Queensland, the Optometrists Board of Queensland, the Osteopaths Board of Queensland, the Pharmacists Board of Queensland, the Physiotherapists Board of Queensland, the Podiatrists Board of Queensland, the Psychologists Board of Queensland, and the Speech Pathologists Board of Queensland.
7. Each of the abovementioned Boards requires services among other things from my office in respect of registration services, Board meeting support services, complaints management services, Health Assessment and Monitoring services ("HAM"), professional advice and support services, corporate support services. There are a range of sub-services within each of these major service delivery areas. The number of major service delivery areas have been reduced during the period from 2002 to date. In addition to the introduction of the Administration Act, over the last 5 years there has been considerable overhaul of Health Practitioner Regulation. Firstly the Health Practitioner (Professional Standards) Act 1999 ("HPPS Act") was commenced concurrently with the Administration Act. Secondly, new legislation was promulgated reconstituting various of the Health Practitioner Registration Boards, constituting 2 new Boards (Osteopaths Board and Chiropractors Board) from one pre-existing Board and the creation of a new Board, the Medical Radiation Technologists Board. The Health Practitioner registration boards and their respective the constituting Act, together with the former title of constituting Act is reproduced in the table as follows:

Old Act	New Act	Commencement Date
<i>Medical Act 1939</i>	<i>Medical Practitioners Registration Act 2001</i> ("MPRA")	Start Date 1 March 2002


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Old Act	New Act	Commencement Date
<i>Chiropractors & Osteopaths Act</i>	<i>Chiropractors Registration Act 2001 and Osteopaths Registration Act 2001</i>	Start Date 1 May 2002
<i>Dental Act 1971</i>	<i>Dental Practitioners Registration Act 2001</i>	Start Date 1 January 2002
<i>Dental Technicians & Dental Prosthetists Act 1991</i>	<i>Dental Technicians & Dental Prosthetists Registration Act 2001</i>	Start Date 1 May 2002
<i>Occupational Therapists Act 1979</i>	<i>Occupational Therapists Registration Act 2001</i>	Start Date 1 February 2002
<i>Optometrists Act 1974</i>	<i>Optometrists Registration Act 2001</i>	Start Date 1 February 2002
<i>Pharmacy Act 1976</i>	<i>Pharmacists Registration Act 2001</i>	Start Date 1 February 2002
<i>Physiotherapists Act 1964</i>	<i>Physiotherapists Registration Act 2001</i>	Start Date 1 February 2002
<i>Podiatrists Act 1969</i>	<i>Podiatrists Registration Act 2001</i>	Start Date 1 May 2002
<i>Psychologists Act 1977</i>	<i>Psychologists Registration Act 2001</i>	Start Date 1 May 2002
<i>Speech Pathologists Act 1979</i>	<i>Speech Pathologists Registration Act 2001</i>	Start Date 1 February 2002
	<i>Medical Radiation Technologists Registration Act 2001</i>	Start Date 12 May 2002

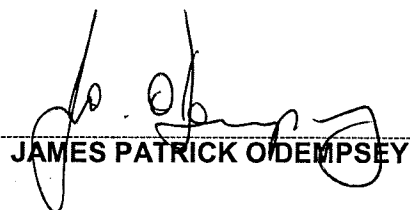
8. There were also regulations which were promulgated in respect of each of the abovementioned Acts in substitution of previously superseded by-laws. The new legislation referred to above was the result of a long term strategic overhaul of health regulation by the Department of Health aimed at creating uniformity of regulation of all health practitioners and consistency across all the professions. The new legislation was also intended to produce efficiencies through economies of scale. The registration acts, the Administration Act, together with the HPPS Act formed the legislative scheme ensuing from that strategic review. While the registration acts commenced as per the dates detailed in paragraph 7 the Administration Act and the HPPS Act were commenced on the same date in February 2000.


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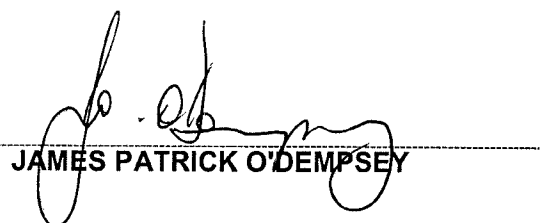
9. When I first commenced my duties as Acting Executive Officer on 4 March 2002 at the OHPRB it was apparent to me that there had been very limited planning undertaken by the Office and its predecessor, particularly at the strategic level, for introduction of the Administration Act, the HPPS Act and the Registration Acts. Prior to the Administration Act all of the various health professional registration Boards were administered by an office known as the Office of Health Professional Registration Boards. In my opinion that office and structure and its predecessor had led to a culture of the staff resources being utilised as servants to each of the Boards rather than the office being structured as a professional service and advisory organisation to all of the Boards equally. This also resulted in 'silo' based team structures and organisation reactive to the environment rather than proactive in developing regulation in the public interest. I am not saying this to be critical of any individual or group nor to suggest this in any way has created any excuse for any adverse outcomes which are to be canvassed in this statement. However it is important to articulate the fact that there is a great deal more work required by my office in its overall operations to achieve the objects set by the legislative scheme. In particular, a great deal of preliminary work has taken place in the planning for implementation of a reliable and highly automated registration process for all Boards. This will remove as far as possible errors through human factors in the registration process. This registration project was commenced in October 2003 and I will refer more particularly to it later in this statement.
10. The registration project is one of a number of significant activities undertaken by my office since March 2002 in order to implement systems to ensure effective corporate governance; that is, to ensure the organisation had structures, systems, policies and procedures in place in order that it was reliable in achieving the objectives of the legislative scheme. Such projects and activities are detailed in the official reports of the OHPRB.

B. OFFICIAL REPORTS OF THE OHPRB SINCE FEBRUARY 2000

11. In order to appreciate some of the statistical data for the OHPRB and its progress since inception, reference to the official Annual Reports is helpful. Annexed hereto and marked "JPO-2" is a true copy of the Annual Report of the OHPRB for 2000/2001. Whilst this is noted to be the first Annual Report it was preceded by an earlier report which was for part of the calendar year 2000 (from February 2000 to 30 June 2000).
12. Annexed hereto and marked "JPO-3" is a true copy of the Annual Report of the OHPRB for the year ending 30 June 2002. I have referred to this report as the 'third report' in the covering letter to the Minister.


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13. Annexed hereto and marked "JPO-4" is a true copy of the Annual Report of the OHPRB for the year ending 30 June 2003. In this report there is particular reference to the question of registration processes and the proposed integrated registration policy and procedure (page 7 report 2003).
14. Annexed hereto and marked "JPO-5" is a true copy of the Performance Report for the period 1 July 2004-31 December 2004.
15. Annexed hereto and marked "JPO-6" is a true copy of the submission upon the Registration Review Project which I prepared for the attention of all Boards, dated 14 March 2005.
16. The services provided by the OHPRB to the MBQ are governed by a service agreement. The current service agreement is for the period 1 July 2003 to 30 June 2006.
17. Annexed hereto and marked "JPO-7" is a true copy of the service agreement currently in place between the OHPRB and the Medical Board of Queensland.
18. Pursuant to Section 33 of the Administration Act a review of the administrative arrangements established by that Act was commenced in June 2003. A contractor, Mr Gil Brookes of Brookes Management Services Pty Ltd, conducted this review and provided a report entitled "Final Report – Review of the *Health Practitioner Registration Boards (Administration) Act 1999*. In this review and report a critical analysis was undertaken of the OHPRB. A report to Parliament was subsequently tabled in Parliament by the Minister on 14 April 2004. Annexed hereto and marked "JPO-8" is a true copy of the report as tabled in Parliament.
19. The review undertaken by Mr Brookes determined, in general terms, that there was no need to amend the Act. The observations made as a result of the conduct of the Review (page 38) were as follows:
 - "The HPRB Office established under the Act does meet the objective of the Act of assisting Boards perform their functions
 - The services provided by the HPRB Office are superior overall than those provided under the previous model
 - The establishment of the HPRB Office has substantially addressed the administrative and support issues identified during the HPRA Review

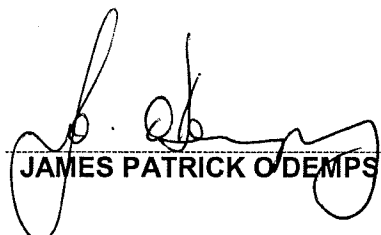


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- The introductions of Service Agreements and the operation of the HPRB Office under those Agreements has been a significant aspect of the new support arrangements
- Although the current Service Agreements are an improvement on the first versions, they are still fairly complex documents and the opportunity to streamline the agreements should be taken during the next renewal process
- There is a need to establish Board specific key performance indicators in the next version of the Service Agreements (a requirement identified in the current versions of Service Agreements)
- The underlying model of a single independent statutory body providing administrative and operational support to all Health Practitioner Registration Boards does attract savings and operating efficiencies, especially in relation to the operation of smaller Boards
- There is a need for the current model to be continued and the services delivered under it further refined and improved so as to enable the Boards to cost effectively meet their functions
- The current Executive Officer has been critical in the improved services and client focus of the Office and he has assisted the new model to achieve its potential"

The formal findings of the review (pages 38-39) were as follows:

- "The effectiveness and responsiveness of the HPRB Office established by the Act have resulted in improved administrative and operational support for the Health Practitioner Registration Boards in Queensland
- The operational and support issues identified in the HPRA Review have been substantially addressed, and the identified benefits from adopting this approach have also been substantially achieved
- No requirements for legislative changes to the Act were identified as a result of the review, and there is no pressure from key stakeholders to modify the Act or the current administration and operational support model
- After a reconsideration of the relative merits of alternative means of providing administrative and operational support to the Boards, it is considered that the



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approach adopted in the Act remains the most relevant to the Queensland environment

- There is no requirement to make any legislative change in relation to the reporting relationship of the Executive Officer, including the proposed performance review arrangements for the position
- The administrative and operational support arrangements established under the Act should be maintained"

20. Also this particular review examined the models which have been adopted in other jurisdictions of Australia in respect of health practitioner regulation (pages 31-34). This general analysis for health practitioner Boards can provide a useful starting point in analysing the models in other states and territories of Australia.

C. OVERVIEW OF COMPLAINT HANDLING PROCESS AT OHPRB

(a) Legislative Provisions

21. The process of complaint handling by my office is governed by the provisions of the HPPS Act. In particular section 47 provides:

47 Who may make complaint about registrant

A complaint about a registrant may be made by any entity, including, for example—

- (a) the user of a service provided by the registrant; or*
- (b) an entity acting on behalf of the user of a service provided by the registrant; or*
- (c) another registrant; or*
- (d) the chief executive; or*
- (e) the Minister; or*
- (f) a foreign regulatory authority.*

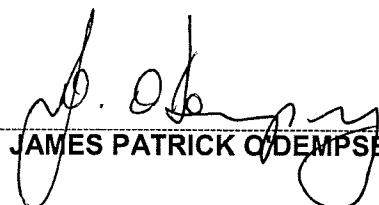
Furthermore a complaint must be made in writing:

49 How complaint is made

A complaint about a registrant to a board must be in writing and contain particulars of the allegation on which it is founded.

However section 63 of the HPPS Act does allow a Board to investigate upon its own initiative if

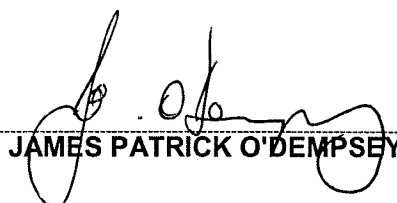
- (a) "it reasonably believes that an aspect of the registrant's conduct or practice, or another matter relating to the registrant, may provide a ground for disciplinary action against the registrant; and*


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(b) it has not received a complaint under the complaints part about the aspect of the registrant's conduct or practice or the other matter.

As to advising stakeholders of the complaint/investigation processes, the Board has published these and other information about the HPPS Act in its Newsletter entitled "The Medical Board of Queensland Bulletin." Copies of these Bulletins are published on the Board's Website at www.medicalboard.qld.gov.au I am also aware that Queensland Health developed through its Quality Improvement and Enhancement Program, a complaint management policy which was to be released concurrent with the conduct of an education program about the policy at District Health Service level. As Executive Officer of the Queensland Nursing Council I nominated a member to the Program Area Board which had oversight of the Patients Complaints/Patient Surveys Program area. The OHPRB had also nominated a member to that Board. I am not aware as to the implementation of the complaint management policy other than I reviewed a final copy of it to ensure it was consistent with the HPPS Act. A search of records of the OHPRB has revealed certain documentation in regard to the meetings of that Board. I have instructed the Board's solicitors in this Inquiry to make and provide a complete copy of that documentation to the Commissioner through his office.

22. Under Section 51 of the HPPS Act the MBQ gives notice to the Health Rights Commissioner of all complaints about any registrant from either a user of a service provided by the registrant or an entity acting on behalf of the user to the Health Rights Commissioner. There is a reciprocal legislative requirement under the Health Rights Commission Act. After notice is given of such complaints consultation takes place between the OHPRB and the Office of the Health Rights Commissioner as to whether the MBQ will keep the complaint for investigation. If the MBQ keeps the complaint for investigation or for any other of the purposes as outlined in section 51, the MBQ provides a copy of the complaint to the Health Rights Commissioner. If for any reason the MBQ does not take any action under section 51 the complaint is referred to the Health Rights Commissioner immediately and is "taken to be a health service complaint made to the Commissioner under the Health Rights Commission Act." (S 52 (2)) If this occurs the MBQ takes no further action upon the complaint unless it is referred back to the Board under the Health Rights Commission Act.
23. Complaints may also fall within the category of those mentioned in Section 53 of the HPPS Act where the complaint comes from an entity other than the user of a health service or from the Health Rights Commissioner where the matter is alleged to have happened before 1 July 1991. After consideration of the complaint there are various actions available to the Board



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under Section 53 (2). However if the complaint is rejected for any reason as provided in Section 54 the MBQ must give notice of the decision to the complainant, to the Registrant and to the Health Rights Commissioner.

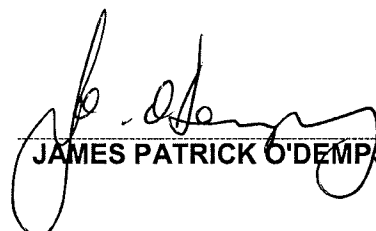
24. If the Board is conducting an investigation into a Registrant the Board provides reasonable reports about the investigation to the Health Rights Commission pursuant to section 116 of the HPPS Act. Upon the completion of an investigation the Board forwards its report upon the investigation and the proposed course of action to the Health Rights Commissioner. (S115 HPPS Act) The Health Rights Commissioner may make any comments upon the report with 14 days or such further time as may be agreed by the Board. Before taking any further action the Board must consider the comments as made by the Health Rights Commissioner if comments are made. (S116 HPPS Act) The Board is then required to consider the actions available to it pursuant to Section 118 HPPS Act.

(b) Complaints Structure Within OHPRB

25. In practical terms, unless a complaint or concern about a registrant is in writing an investigation will not be commenced. Invariably, a serious oral complaint will soon be followed up by a complaint in writing. A written complaint enables a proper assessment of the subject-matter of complaint, gives an opportunity to objectively gauge the level of seriousness of the complaint and allows a threshold assessment as to whether the matter could amount to unsatisfactory professional conduct, or whether it is frivolous or vexatious or whether further information should be required from the source. Unsatisfactory professional conduct has an extended definition in the Schedule to the HPPS Act. There are also various grounds for disciplinary action which are outlined in section 124 HPPS Act.
26. The QHPRB currently employs 7 full time investigators headed by a complaints co-ordinator in the Professional Standards Unit ("PSU") which is tasked to investigate complaints of unsatisfactory professional conduct and any breaches of the HPPS Act or a Registration Act. The OHPRB employs 6 people including 2 investigation/monitoring officers in the HAM unit including a co-ordinator. The Office also employs a qualified Medical Advisor, Dr Karen Yuen who assists both the HAM unit and the PSU in respect of medical issues.

(c) Induction of Board Members Generally and as to Complaints

27. The process of educating new Board members of all registration Boards is important in achieving the objects of the respective governing legislation. Since March 2002 I have been conducting induction workshops of 2-4 hours duration for new Board members for all of the



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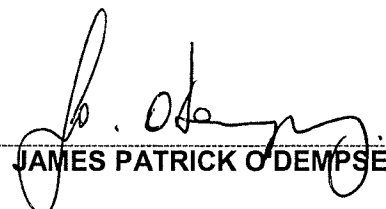
Boards as and when they are appointed. In particular, on 7 December 2004 I presented an induction workshop to the existing and new members of the MBQ. Annexed hereto and marked "JPO-9" is a true copy of the materials which I covered in that induction workshop and upon which I spoke and answered questions.

(d) Registration, Complaint and Impairment Files kept by OHPRB

28. Each medical practitioner registrant has a registration file in his/her name kept by the OHPRB. Since 2000 when the HPPS Act was commenced a separate investigation file or complaint file was also created. A HAM file is created when dealing with the assessment and monitoring of an impaired practitioner.

D. TERMS (1) AND (3) OF TERMS OF REFERENCE – DR JAYANT MUKUNDRAY PATEL

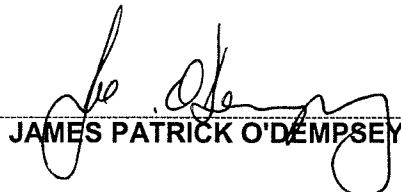
29. I am aware that the registration of Dr Jayant Patel is to be the subject of detailed discussion and analysis in the statement of Deputy Registrar Mr Michael Demy-Geroe. The staff member who was responsible for checking the registration application of Dr Patel to ensure that it was complete was Ms Ainslie McMullen. She was employed as an administrative officer. Ms McMullen resigned her position of employment at the OHPRB effective 3 May 2005 and for the preceding 8 months had been on unpaid leave to work in the private sector. I am not aware of any connection between the current matters for Inquiry and the resignation of Ms McMullen.
30. As to complaints or concerns relating to the clinical practice and procedures conducted by Dr Patel at the Bundaberg Base Hospital, my first knowledge of any concern raised about him was on 15 February, 2005. There was a meeting at my Office with two representatives of the Queensland Nurses Union, Ms Judy Simpson (in house solicitor) and Ms Kym Barry (professional officer). This meeting had originally been scheduled for some time in late January, 2005 but at the time of scheduling the Union did not indicate to my staff the purpose of the meeting. In instructing my staff to seek to have the meeting re-scheduled to 3 February I also requested that they seek from the Union the subject matter of the meeting. The meeting was rescheduled for 3 February and the subject matter for the meeting was advised by the Union to be about N.P.O. from the Gold Coast, a practitioner the Union had submitted a written complaint about on behalf of members, and a Doctor Patel. No further information was provided to my staff at that time. The 3 February meeting had to be rescheduled to 15 February due to my need to attend a family funeral.


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31. The focus of the meeting of 15 February was in relation to the written complaint about N. P. O. However later during this meeting the two representatives of the QNU indicated that their members were concerned about Dr Patel and were being interviewed that morning by Dr Gerry Fitzgerald. I inquired as to why these concerns had not been put into writing by way of complaint to the Board. I cannot recall the response. However the next day after this meeting I spoke to Board member and Chief Health Officer for Queensland, Dr Gerry Fitzgerald and he told me that he had been in Bundaberg to conduct a clinical review into surgical services. He stated he was awaiting clinical benchmark data prior to finalising his report. He also stated that there may be recommendations or information concerning Dr Patel referred to the Board as a result of his review. I was aware that Dr Patel had submitted an application for registration renewal and a decision on that application was required by the end of May 2005. I mentioned to Dr Fitzgerald that the Registration Advisory Committee ("RAC") would appreciate receiving any information about Dr Patel prior to the end of May in order that the Committee could consider whether it was necessary to recommend that the Board impose conditions upon Dr Patel's registration. This was because conditions upon registration would be more readily imposed under the MPRA than under the HPPS Act. I will later in this statement indicate the basis for that situation.
32. The OHPRB did ultimately receive a number of written complaints attached to cc's of correspondence from Mr Rob Messenger MP to the Minister for Health subsequent to his raising of the matter in Parliament. Those complaints concerning Dr Patel have been referred to the Health Rights Commission on 29 April 2005, 6 May 2005 and 10 May 2005.

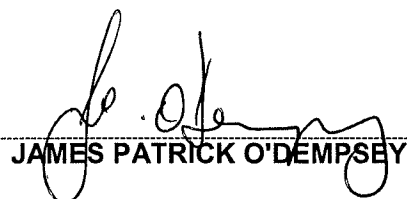
E. (TERM OF REFERENCE 1) ASSESSMENT, REGISTRATION AND MONITORING OF OVERSEAS-TRAINED MEDICAL PRACTITIONERS GENERALLY

33. A person may be eligible for general registration only if they have either successfully completed a medical course accredited by the Australian Medical Council ("AMC") or passed the examination set by the AMC for the purpose of qualifying persons for general registration. (Section 44 MPRA) A person may be eligible for specialist registration (Section 111 MPRA) if they hold one of the qualifications detailed in the schedule to the MPRA Regulations. An overseas trained medical practitioner therefore can apply for general registration or specialist registration only if they have either the AMC certification or the relevant college qualification. MPRA general registration is not a pre-requisite for specialist registration. Also it is important to point out the possibility that an overseas-trained medical practitioner may have first gained registration in another State or Territory of Australia and subsequently uses that registration to obtain registration in Queensland under the Mutual Recognition Act. Once an overseas-trained medical practitioner attains general registration he or she may simply renew his/her


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registration annually subject to payment of the fee and provision of appropriate declarations/information on health, criminal history, civil history for negligence and disciplinary history.

34. The only other pathway available to an overseas-trained practitioner to gain registration in Queensland is under the special purpose registration provisions the primary of which is area of need. Eligibility for special purpose registration is detailed under section 131 of the MPRA and sections 132 to 138 MPRA outline the various activities for special purpose registration. These are supervised training to prepare for clinical examination(S.132), postgraduate study or training(S.133), medical teaching or research(S.134), practice in area of need(S.135), study or training to obtain a qualification in a specialty(S.136), practice in the public interest(S.137), and practice in general practice(S.138).
35. Pursuant to section 140 if the Board decides to register the applicant as a special purpose registrant it must be for a period no longer than 1 year. The Board may also impose conditions upon the registration of the applicant which are necessary or desirable for that person to competently and safely practise the profession.
36. The Board may require the applicant to carry out practice under supervision and may ask the person who carries out the supervision to give information to the Board about the supervised practice (S.141).
37. Section 143 MPRA allows for the immediate registration (under delegation) of a special purpose registrant through provisional special purpose registration where the applicant is qualified for special purpose registration and the time required before the application could be considered by the Board is unreasonable.
38. A Special Purpose registrant can either be designated as an area of need registrant (Section 135 MPRA) or a deemed specialist (Section 143A MPRA). A registrant who is an area of need deemed specialist is registered to practise the profession in a specialty in an area of need and is taken to be a specialist in the speciality and restricted to practice in that specialty. However, such a registrant is not permitted to become registered as a specialist on the register of specialists purely on the basis of his/her special purpose registration. Section 144 MPRA applies the provisions (subject to certain exceptions) which govern the renewal of general registrations in respect of applications for renewal of special purpose registrations. The Board can cause an inquiry into the application for renewal and it can also relevantly impose conditions upon renewal of the special purpose registration.



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39. Furthermore pursuant to section 148 MPRA the Board may cancel a special purpose registration upon grounds outlined in section 149 which provides:-

- (a) the registrant has practised the profession other than for the activity for which the registrant is registered;*
- (b) the registrant has been convicted of an indictable offence;*
- (c) the registrant has been convicted of an offence against this Act, the Health Practitioners (Professional Standards) Act 1999 or a corresponding law;*
- (d) the registrant has contravened a condition of the registration;*
- (e) the registrant was registered because of a materially false or misleading representation or declaration.*

If the Board decides to change conditions which apply to a special purpose registrant then the Board must issue a show cause notice in accordance with the following provisions laid down in section 149A:-

(1) This section applies if the board reasonably believes the conditions imposed on a special purpose registration under this Act need to be changed for the registrant to competently and safely undertake the activity the subject of the registration.

(2) The board must give the registrant a notice (a "show cause notice") stating—

- (a) the board's proposal to change the conditions; and*
- (b) the ground for the proposed change; and*
- (c) an outline of the facts and circumstances forming the basis for the ground; and*
- (d) an invitation to the registrant to show within a stated period (the "show cause period") why the conditions should not be changed.*

(3) The show cause period must be a period ending not less than 21 days after the show cause notice is given to the registrant.

(4) The registrant may make written submissions about the show cause notice to the board in the show cause period.

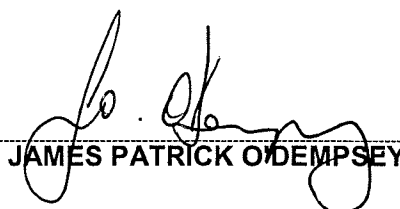
(5) The board must consider any submissions made under subsection (4) and decide whether or not to change the conditions in the way stated in the notice.

(6) The board must give the registrant notice of its decision as soon as practicable after it is made.

(7) If the board decides to change the conditions, it must as soon as practicable give the registrant an information notice about the decision.

(8) The change takes effect when the information notice is given to the registrant and does not depend on the certificate of special purpose registration being amended to record the change or a replacement certificate of special purpose registration being issued.

40. The Board appears to have a greater scope for taking steps to protect the public under the aforementioned provisions in respect of special purpose registrants than it could under the


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powers to immediately impose either suspension or conditions upon registration under section 59 HPPS Act. Section 59 of the HPPS Act in part provides:-

(1) This section applies if a registrant's board reasonably believes at any time, whether on the basis of a complaint or otherwise, that—

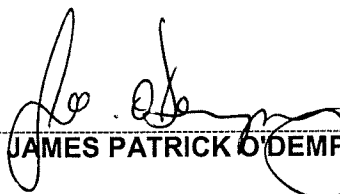
(a) the registrant poses an imminent threat to the wellbeing of vulnerable persons; and

(b) immediate action to suspend, or impose conditions on, the registrant's registration is necessary to protect the vulnerable persons.

(2) The board may decide to suspend, or impose conditions on, the registrant's registration.

(3) However, in making its decision under subsection (2), the board must take the action the board considers is the least onerous necessary to protect the vulnerable persons.

41. In order to invoke the powers of section 59 the Board must decide upon action which is the least onerous upon the registrant in order to protect vulnerable persons. The Health Practitioners Tribunal in Thurling v The Medical Board of Queensland (2002) QHPT 004 established the clear authority that the threshold was a high one for applying section 59 HPPS Act conditions or a suspension in terms of evidence of "immediacy of the threat" and determination of least onerous action to achieve the protection of vulnerable persons. With respect, I believe this provision in its current form is inconsistent with one of the overall objects of the legislation which is the protection of the public by ensuring "health care is delivered by registrants in a professional, safe and competent way..." (S6((a) HPPS Act). The Office is currently finalising a policy paper on amendments to the HPPS Act and the Registration Acts to address this identified problem and other matters in the legislation.
42. Adverse information about any type of registrant can come from a variety of sources including anonymous 'tip offs', by direct reference from a complainant, by referral from the Health Rights Commission or another authority such as Queensland Health and including another overseas registration authority or by inquiry through the media. Whilst there is a traditional practice of Registration Boards in all of the jurisdictions of the Commonwealth exchanging adverse findings or conditions imposed upon registrants, there is no guarantee that any adverse information will be passed on by other overseas jurisdictions concerning registrants. The question as to whether the Board should constantly review the qualifications of all registrants is one which I have attempted to articulate in public statements on behalf of the Board. There is no easy solution. However the point I have made publicly recently is that it is by no means a complete 'fail safe' process for staff employed in the OHPRB to conduct Internet searches periodically upon registrants or for that matter rely upon the


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Internet in the first instance to validate the records of overseas-trained medical practitioners or of any registrant who has practised overseas at any time in his or her career.

43. The fact that an internet search can be undertaken does not cover a situation where an overseas jurisdiction does not post registration data concerning its registrants or advise whether any conditions of practice have been put into place. Secondly even if such information were to be posted, there is also the possibility that the information may be out of date or erroneous. The only reliable means of verification in my opinion would be through a proper pre-arranged protocol between the MBQ and another overseas registration authority.
44. It is important for such protocols to be put into place because the MBQ would be able to take action quickly in cases where a special purpose registrant can have his/her registration affected in the same manner as it might be in any foreign jurisdiction in which they may happen to be registered. The HPPS Act does have provisions which are directed toward the ability of the MBQ to deal with such instances however the reporting provision relies upon the honesty of the registrant to self disclose against the potential imposition of a penalty. Section 385C provides:

(1) This section applies if—

(a) a person is registered under a health practitioner registration Act and is also registered, licensed or certified under a corresponding law to practise the same profession; and

(b) after the registrant is registered under the health practitioner registration Act, the registrant's registration, licence or certification under the corresponding law is affected by disciplinary action or is otherwise cancelled, suspended or made subject to a condition or undertaking (the "relevant action").

(2) The registrant must, within 30 days after the registration, licence or certification is affected by the relevant action, give the registrant's board notice about the relevant action.

Maximum penalty—50 penalty units.

(3) The notice must be in the approved form.

(4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.

45. Further if the Board becomes aware of any situation which affects the registration of a foreign trained special purpose registrant, it may act pursuant to section 311 HPPS Act which provides:-

(1) This section applies if—

(a) after a registrant is registered under the health practitioner registration Act establishing the registrant's board—

(i) the registrant's registration, licence or certification under a foreign law relating to the registrant's profession is


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suspended or cancelled for a reason relating to a matter for which disciplinary action could be taken under this Act; or
(ii) conditions are imposed on the registrant's registration, licence or certification under a foreign law relating to the registrant's profession for a reason relating to a matter for which disciplinary action could be taken under this Act; and
(b) the board reasonably believes that, to achieve the objects of this Act, it is necessary for the registrant's registration in Queensland to be affected in the same way.

(2) The board must give the registrant a written notice that states the following—

(a) the board intends to suspend or cancel, or impose conditions on, the registrant's registration (the "proposed action");
(b) the ground for the proposed action;
(c) an invitation to the registrant to show, by written submission given to the board within a stated time of at least 14 days after the registrant receives the notice, why the proposed action should not be taken.

(3) The board must consider any submission made under subsection (2) and decide whether or not to take the proposed action.

(4) As soon as practicable after the board makes the decision, the board must give written notice of the decision to the registrant and the commissioner (the "decision notice").

(5) If the board decides to take the proposed action, the decision notice must state the following—

(a) the reasons for the decision;
(b) that the registrant may appeal against the decision to the tribunal;
(c) how the registrant may appeal.

(6) A decision to take the proposed action takes effect on the later of—

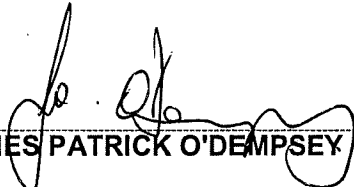
(a) the day the decision notice is given to the registrant; or
(b) the day of effect stated in the notice.

(7) Also, as soon as practicable after taking the proposed action, the board must give the commissioner written notice of the decision.

(8) This section does not limit the disciplinary action a disciplinary body may take under this Act.

F. TERM OF REFERENCE (1) DR KEITH MUIR

46. The circumstances surrounding Dr Keith Muir's registration is dealt with in more detail in the statement of Mr Demy-Geroe. Dr Muir has been required to show cause as to why his registration should not be affected in the same way as his registration was affected in the United States in that his licence to practice medicine was revoked by the New York and New Jersey State Authorities. I have instructed the Board's solicitors in this Inquiry to make and provide a complete copy of the registration file of Dr Muir to the Commissioner through his office. Dr Muir has sought an extension of 28 days from 10 May 2005 in which to provide his submission in response to the Board's Show Cause Notice. The Board will provide this


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extension only upon receipt of written undertakings from Dr Muir that he will not practise medicine until such time as the Board has considered and determined the action it will take under section 311 of the HPPS Act. No impairment file has been created. A complaint file is currently being created.

G. TERM OF REFERENCE (3) DR HENRY ANDY

47. Further with respect to complaints or concerns in relation to medical practitioners from the Bundaberg Base Hospital, I am aware of a substantive allegation, complaint or concern relating to the clinical practice and procedure at that Hospital in respect of Dr Henry Andy. Annexed hereto and marked "JPO-10" is a true copy of a memorandum addressed to me by Mrs Robyn Scholl, Assistant Registrar of the Medical Board, dated 20 April 2005 in relation to Dr Henry Andy. It appears to me that the briefing memo contains typographical errors referring to Dr Henry rather than Dr Andy. I have instructed the Board's solicitors in this Inquiry to make and provide a complete copy of the registration file of Dr Andy to the Commissioner through his office. No complaint or impairment file has been created.

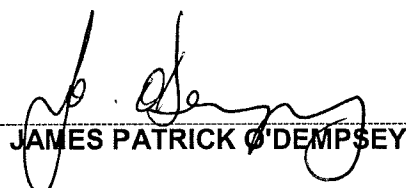
H. TERM OF REFERENCE (3) DR QURESHI

48. Further with respect to complaints or concerns in relation to medical practitioners from the Bundaberg Base Hospital, I am aware of a substantive allegation, complaint or concern relating to the clinical practice and procedure at that Hospital in respect of Dr Qureshi. Annexed hereto and marked "JPO-11" is a true copy of a briefing note to the Minister for Health which I authorised in relation to Dr Qureshi. I have instructed the Board's solicitors in this Inquiry to make and provide a complete copy of the registration file and complaint file of Dr Qureshi to the Commissioner through his office. No impairment file has been created.

I. TERM OF REFERENCE (3) N.P.O.

49. N.P.O. was the former director of obstetrics and gynaecology at the Bundaberg Base hospital and was not an overseas-trained registrant. However he is the subject of a substantive complaint in respect of his practice. I have instructed the Board's solicitors in this inquiry to provide to the Commissioner a complete copy of the investigation file pertaining to N.P.O.
50. There are further overseas-trained medical practitioners who have come to public light in respect of the Hervey Bay Hospital. The names of these practitioners are:

Dinesh Chandra Prasad Charma


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Dr Damodaran Krishna
Dr Morgan Neelan Naidoo

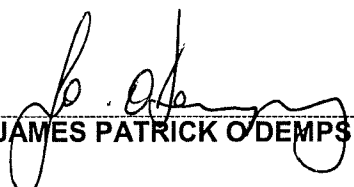
51. I have instructed the Board's solicitors in this inquiry to provide copies of the relevant files of these practitioners to the Commissioner.

J. AUDIT OF SPECIAL PURPOSE REGISTRANTS

52. In response to the concerns raised as a result of the registration of Dr Patel, I caused an audit of special purpose registrants to be undertaken. Annexed hereto and marked "JPO-12" is a true copy of the final results of a primary audit of special purpose registrants dated 18 April 2005 which I prepared for submission to the Minister for Health. Annexed hereto and marked "JPO-13" is a true copy of my submission dated 22 April 2005 to the Minister for Health in relation to the final results of a secondary audit of special purpose registrants. Whilst there does not appear to be any other medical practitioner who is subject to disciplinary action or adverse record or comment by their overseas registration authority, this does not necessarily mean that there is no such adverse record for any particular overseas-trained registrant.
53. I prepared a supplementary report to the Minister on remedial actions to be implemented by the MBQ in relation to problems associated with the registration of special purpose registrants. Annexed hereto and marked "JPO-14" is a true copy of my report dated 18 April 2005.
54. I prepared a submission to the Board in relation to a proposal for implementing changes to special purpose registration and related matters dated 22 April 2005. Annexed hereto and marked "JPO-15" is a true copy of that submission. Two of the recommendations in that proposal were for the establishment of a special purpose assessment unit and increased resources for the professional standards unit.

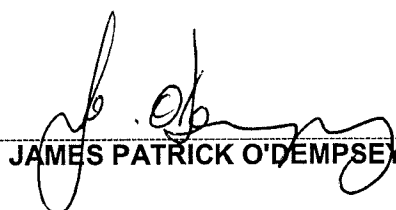
K. TERMS OF REFERENCE (2) - AREA OF NEED ISSUES AND PROBLEMS ASSOCIATED WITH ASSESSMENT OF OVERSEAS-TRAINED DOCTORS

55. Queensland is highly dependent on international medical graduates. Area of need or special purpose registration is aimed at addressing medical workforce shortfalls, particularly in rural and remote areas and in the public sector. The MBQ has no interest in seeking to have any particular place nominated as an area of need for Ministerial declaration. The requests for an area of need declaration can come from a private hospital, a private clinic, or from a public hospital. The MBQ's role is to ascertain whether the area of need declaration is on foot and that an applicant for special purpose registration is otherwise qualified for the


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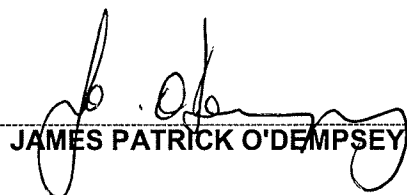
purposes of registration. Typically, if an area of need has been established then the employing entity would designate permitted activities at their approved location.

56. I have been involved in numerous workshops, meetings or conferences which deal with the important issue of area of need registrations, not just within Australia but internationally. I see the problem as not being one simply confined to Queensland or Australia. With particular reference to the issues involved in assessment of overseas-trained surgeons, the Royal Australasian College of Surgeons Review published a comprehensive paper upon its review in April 2005. Annexed hereto and marked "JPO-16" is a true copy of this paper.
57. The issue involving assessment and the promulgation of portability for overseas-trained medical practitioners is one which continues to be considered by the International Association of Medical Regulatory Authorities ("IAMRA"). The MBQ became an inaugural member of that body. I attended a biennial conference of IAMRA held in April 2004 in Dublin. A report upon that conference was prepared by me and fellow attendees on behalf of the MBQ. This particular report details in broad format some of the themes and issues which are problematic in respect of area of need registration from an international perspective. Annexed hereto and marked "JPO-17" is a true copy of this report. IAMRA has a website of reference material and resources touching upon areas of need and foreign trained medical practitioners. The website address is www.iamra.com.
58. The MBQ is developing the necessary changes to enhance the assessment of overseas-trained medical practitioners whilst at the same time not making revolutionary changes which would directly impact on the supply of medical practitioners to the workforce in Queensland. Broadly these initiatives are:
- Since May 2004 the Board implemented a policy, developed in the preceding year, which required all overseas qualified medical practitioners seeking special purpose registration to sit and pass the International English Language Test. This ensures they have the necessary language skills for medical practice.
 - Since February 2004 the Board has been developing a policy on the 'Requirements of Supervised Practice.'
 - From July 2006 a national computer administered screening examination will be implemented for all special purpose registrants. The Board has always intended to utilise this screening examination for area of need registrants.



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- With the introduction of the national screening examination, the online primary source verification of all qualifications will commence. Negotiations for this service are currently underway with the US Education Commission for Foreign Medical graduates.
59. It is not a part of the Board's business to involve itself in policy issues concerning shortage of medical practitioners in any particular area, however the Board is aware of the problems created by shortages of medical practitioners in particular areas. The Board is aware of the competing interests at stake in the need for the providers of medical services to attract overseas-trained registrants and the competitive nature of the market for medical services. Not only is the competition keen among the various states and territories of Australia the competition world-wide is very keen.
60. The problem of setting uniform standards for area of need registrants has been under consideration by government for a considerable period of time. Annexed hereto and marked "JPO-18" is a true copy of a general history of the development of assessment processes for overseas-trained doctors, including area of need assessment processes.
61. A specific document demonstrating the historical background to the problems of area of need registration is evidenced in a 1996 report by the Australian Medical Council to the Australian Health Minister's Advisory Council dealing with a structured system for area of need registration. Annexed hereto and marked "JPO-19" is a true copy of that report. A recent forum on the assessment of temporary resident doctors for general practice hosted by Department of Health and Ageing on 20 April 2005 deals with the issues of a national approach to the assessment of temporary resident doctors. A background paper titled 'Assessment of Temporary Resident Overseas-trained General Practitioners' was published by the Department for that forum. Annexed hereto and marked "JPO-20" is a true copy of this document. The Registrars/CEO's sub-group of the Joint Medical Boards Advisory Committee of the Australian Medical Council produced a position paper for the forum. Annexed hereto and marked "JPO-21" is a true copy of that document. The report on remedial actions which I prepared for the Board's consideration, and which was subsequently presented to the Minister was based directly on the position paper produced by the Registrars/CEO's.



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62. In terms of statistics in relation to overseas-trained doctors having been registered by the MBQ in the years since 2002-2003 I have extracted the following data:

Period	Number registered
(a) 2002-03;	2,704
(b) 2003-04; and	3,402
(c) 2004 to March 2005	2,770

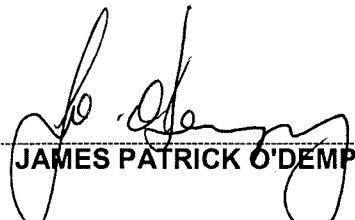
The following summary represents the number of applicants for registration who were refused registration by the MBQ:

(a) 2002-03	18
(b) 2003-04	27
(c) 2004-March 2005	45

There were, at the time of the audit the OHPRB conducted (referred to in documents "JPO-12" and "JPO-13"), 1760 overseas-trained registrants in Queensland who were registered as special purpose registrants.

63. The overseas-trained doctors who were registered in area of need are not actually placed on the specialist register. They are 'deemed specialists' pursuant to Section 143A of the MPRA. As at 22 April 2005, there were a total of 94 overseas-trained doctors working in "*deemed specialist*" positions in the public health system.
64. I have in my time as Executive Officer of the OHPRB engendered a co-ordinated, strategic approach to developing the services the Office provides as well as implementing extensive and necessary changes in complex areas with limited funding. Annexed hereto and marked with the letters assigned respectively are true copies of operational plans of the Office in which I was involved:

"JPO-22"	Operational Plan 2002-2003
"JPO-23"	Operational Plan 2003-2004
"JPO-24"	Operational Plan 2004-2005
"JPO-25"	Draft Operational Plan 2005-2006


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65. I have also developed through extensive consultation with stakeholders a strategic plan for the QHPRB and each of the thirteen health practitioner registration Boards. Annexed hereto and marked "JPO-26" is a true copy of the strategic plan of the Medical Board titled "*Strategic Plan 2003-2007 - The Strategic Directions of the Medical Board of Queensland*".

L. **CONCLUSION**

66. In relation to the model of health practitioner registration legislation which is in place in Queensland as administered by my office, with respect, I believe that it is a model which is workable. I see the role of Boards in the future to be more focused on governance rather than on management. With respect, my opinion is that in the old model of regulation prior to the current legislative scheme coming into effect, there was a culture of Boards becoming far too involved in administrative issues and for the Office and the Boards to react to the external environment rather than plan for proactive change. For the public interest to be best served, those Boards should be unburdened with administrative issues and concerns and be able to concentrate their business purely on governance and ensuring policy is in place and carried out as well as making decisions under the legislation that are reserved to the Board.

Statement taken:

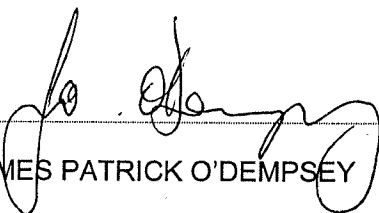
STATEMENT signed

17th

day of

May

2005



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