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16 August 2005

Mr David Andrews SC
Senior Counsel Assisting
Bundaberg Hospital Commission of Inquiry
Level 9, 363 George Street
BRISBANE QLD 4000

Dear Mr Andrews

Vincent Victor BERG

We provide this letter on behalf of our client the Medical Board of Queensland ("the Board").

We refer to the question posed in the Inquiry at Townsville by Commissioner Morris QC (page 3404 line 10 of the transcript on 2 August 2005), where he asked "*what extra information came to light over that period of 12 months to convince the Board by January 2003 that Mr Berg did not hold recognised qualifications to enable him to be registered?*".

We have sought our client's instructions and advise as follows.

1. The "Forgery" Allegation and The President's Response dated 28 January 2003

By way of background, we note that the Board first became aware of the forgery allegation relating to Vincent Berg's claimed medical qualifications on 19 October 2001, in a letter from The Royal Australian and New Zealand College of Psychiatrists (RANZCP) to the Australian Medical Council (AMC) provided to the Board. At this time, Berg was not a registrant in Queensland or any other state. The Certificate of Good Standing, issued on 10 January 2002, was valid for 3 months. At this stage the Board was not able to verify the qualifications on which Berg's registration was granted - a fact which was clearly stated in bold print on the Certificate.

On 19 October 2001 the Board received the letter from the RANZCP enclosing the Russian University's email and statement indicating that the documents were a forgery. In light of Berg's defence under cover of letters to the AMC dated 30 October 2001 and 11 November 2001, the Board was not in a position to verify or disprove Berg's claimed qualifications. The Board's dilemma was compounded in that another governmental agency, the Commonwealth Department of Immigration had accepted Berg's status as a refugee and that his claimed status of a medical practitioner in Russia had been a factor in his application to the Department of Immigration.

On 11 February 2002, the Western Australian Medical Board contacted the Deputy Registrar of the Board after provisionally registering Berg's application for Area of Need registration and was advised of the Board's concerns regarding the veracity of his qualifications. On 15 March 2002 the Board received a facsimile from the Western Australian Medical Board which noted that after granting Berg

provisional registration for an (Unmet Area of Need) position on 29 January 2002, that Board had cancelled Berg's registration on 28 February 2002, after it became aware of the unconfirmed allegation of forgery.

It is not the case that any extra information came to the knowledge of the Board. Rather, the lack of any further information to substantiate, or otherwise, the veracity of Berg's claimed medical qualifications to the College or AMC led to the apparent change in the Board's attitude. Thus the Board ultimately took the view that "*Mr Berg did not hold recognised qualifications to enable him to be registered to undertake postgraduate training in psychiatry*", as noted in Dr Toft's letter dated 28 January 2003. These comments were not intended to be a statement that the Board was in possession of any substantive or conclusive information regarding the fraud allegation.

Mr Berg was essentially given an opportunity to respond to the RANZCP and had not been able to prove his credentials. This failure to verify his qualifications was, over time, sufficient for the Board to adopt the view that he "*did not hold recognised qualifications*". It was not the Board's position to claim Berg's qualifications were a forgery as this was not proven in light of Berg's submissions to the AMC.

Upon review of this matter, the Board considers that the issuance of a Certificate of Good Standing dated 10 January 2002 ought not have occurred in all the circumstances. The Board regrets the administrative oversight of issuing such a Certificate of Good Standing dated 10 January 2002. As a general rule, the Board provides a former registrant a Certificate of Standing if the former registrant is not currently registered and is not otherwise the subject of adverse reports held by the Board. The Board had issued a Certificate of Standing, on 31 July 2001 before the College's concerns were raised that it was unable to verify Berg's qualifications.

If there is any redeeming feature in this matter, it is that the Certificate of Good Standing dated 10 January 2002 was only "**valid for three months**" and was clearly not valid after that time. In addition, that Certificate contained an important qualification, in bold print, namely:

"The Board has not been able to verify the qualification on which Dr Berg's registration was granted".

The Register of the Board included such a qualification in the expectation that any other Board would be put on inquiry. Indeed, as has been demonstrated, the Western Australian Board did make an inquiry of the Queensland Medical Board, with the result that Berg's WA registration was cancelled a month after it was granted provisionally.

2. Notification of Employers

We now refer to the issue you raised at the Inquiry in Townsville (page 3561 of transcript at line 30), as to the Board's attitude to notifying an employer who may have an interest in a questionable registration. That is, whether the Board would inform an employer during the investigative phase as to an allegation of fraud or forgery, or alternatively when there is proof of such an allegation concerning their registration.

The Board's policy is to notify an employer or any person with a legitimate interest such as other State regulators of any allegation of fraud regarding any registrant. However, in accordance with procedural fairness, the Board must have sufficient proof to hold a reasonable belief that the allegation can be substantiated, on the balance of probabilities. The Board would not, as a matter of course, notify employers or regulatory bodies interstate of any allegation of fraud or forgery, until such time as its investigations established conclusive proof of such allegations. Berg's case was a



unique matter where, because of his refugee status, it was difficult to ascertain the legitimacy of his qualifications.

The Board advised of its concerns when contacted by Northern Territory and New Zealand Medical Boards in 2001 when each of these bodies made inquiries regarding Berg's Certificate of Standing, and by the Western Australian Medical Board in 2002 regarding the COGS. In each case the Board responded that it had not been able to verify Berg's qualifications.

The Board acknowledged that it regretted it had not notified the Townsville Health Service District under cover of Dr Toff's letter of 28 February 2003. The Board took the view that any further investigations would not be pursued given that Berg had not been a registrant at that stage for nearly two years.

Should you require any further clarification of the Board's position on any of the above matters, or any other issue raised in the Inquiry to date concerning Berg, we will seek our client's immediate instructions.

Yours faithfully
GILSHENAN & LUTON



Paul McCowan
Partner

