Transcript of Proceedings

THE HONOURABLE G DAVIES AO, Commissioner

MR D C ANDREWS SC, Counsel Assisting
MR R DOUGLAS SC, Counsel Assisting
MR E MORZONE, Counsel Assisting
MR D ATKINSON, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 2) 2005

QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY

BRISBANE

..DATE 21/09/2005

..DAY 8

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

THE COMMISSION RESUMED AT 9.59 A.M.

COMMISSIONER: Last night I received a letter from the Honourable Premier, dated 20 September 2005, relating to documents which were the subject of evidence. I propose to make that letter an exhibit and for it to be published, of course. That will be exhibit number 356.

ADMITTED AND MARKED "EXHIBIT 356"

COMMISSIONER: Yes, Mr Andrews?

MR ANDREWS: Commissioner, before I call Dr Sharma to the witness-box, permit me to remind you that yesterday during the evidence of Mr Kerslake, it emerged that among the different complaints that had been received by the Health Rights Commission, there also were some complaints made in respect of events at Hervey Bay. And according to the evidence, one complaint was in respect of something done by Dr Sharma, who is due to give evidence this morning.

COMMISSIONER: Yes.

MR ANDREWS: The Health Rights Commission this morning delivered, with respect to that particular complainant, their file and the medical records of the Hervey Bay Hospital and the Maryborough Hospital, and I note, for your information, because you may anticipate, as may some of the parties, that Dr Sharma might be asked to consider these records and the matter of the complaint.

COMMISSIONER: Yes.

MR ANDREWS: But, in fact, the complaint is generally in respect of the conduct of two other practitioners, and where it refers to a third practitioner, who may be Dr Sharma, it is simply to the effect that on Wednesday, the 3rd of December, the complainant asserts "an inexperienced doctor performed this procedure twice", the procedure being the aspiration of her knee, "because he didn't get it right first go. I wouldn't have consented if I had known how painful it was."

I might say that in the context of the letter, it doesn't appear that the complainant regarded it as a serious matter. It is for that reason that you will not hear from me an exploration of that issue with Dr Sharma.

COMMISSIONER: Right.

MR ANDREWS: I call Dr Sharma.

MR FARR: Commissioner, I appear for Dr Sharma, and just while he is coming in, he has indicated to me he would prefer to give evidence without cameramen, photographers or tape recordings of journalists taking place in the Court.

COMMISSIONER: All right. There will be an official record, of course.

MR FARR: Yes, he appreciates there will be an official record.

COMMISSIONER: Yes, all right. Is there any particular reason for that?

MR FARR: Yes, he has had - due to the publicity generated by this report, his children have suffered. He is concerned about them.

COMMISSIONER: All right. I will order there be no transcript of the evidence other than the official transcript and no photographs during the course of his evidence.

MR FARR: Thank you.

COMMISSIONER: Yes.

DINESH SHARMA, SWORN AND EXAMINED:

MR ANDREWS: Good morning, Dr Sharma?-- Good morning. Good morning, Commissioner.

My name is Andrews. I am assisting the Commission of Inquiry. Dr Sharma, I have a copy of your statement signed at Hervey Bay on the 27th of July 2005, a statement of 44 paragraphs. Do you have a copy of that with you?-- Yes.

Doctor, are the facts recited in that statement true and correct to the best of your knowledge?-- Yes.

And the opinions you express in it, are they honestly held by you?-- Yes, they are honestly held by me.

I tender that statement, Commissioner.

COMMISSIONER: That will be Exhibit 357.

ADMITTED AND MARKED "EXHIBIT 357"

MR ANDREWS: Dr Sharma, your curriculum vitae appears as an

annexure to your statement. It seems that within Australia you worked for about six months at the Royal Newcastle Hospital as a senior orthopaedic registrar?-- That's the term that was used, but I have been corrected, I should not have been called a senior medical officer when I went to the interview. It probably should be orthopaedic registrar.

And a senior orthopaedic registrar, is it the "senior" that was of concern or the fact that it was medical officer?-- It was the "senior" that was the concern.

As an orthopaedic registrar, that would have meant that you'd have worked under the close supervision of an orthopaedic specialist at the time?-- Yes, that's correct.

With the opportunity to learn at that time?-- Yes, that's correct.

You have in Fiji, from December 2001 until January 2003, worked as a consultant orthopaedic surgeon and the Head of Department at the Colonial War Memorial Hospital in Suva?-- That's correct.

From March 2003 you have worked, have you, as a senior medical officer in orthopaedics at the Hervey Bay Hospital?-- That's true.

During 2005, Dr Sharma, there has been a change in personnel at the Hervey Bay Hospital in that Dr Naidoo has been away on leave, am I correct?-- Yes, since the beginning of the year, yeah.

And for a number of months, four and a half months, there was a Dr Kwon, an orthopaedic specialist?-- That's correct.

Did Dr Kwon fill the position of Director of Orthopaedics?-- He was the consulting orthopaedic surgeon but I presume he was also the acting director.

Now, the word "consultant", does that mean specialist?-- It probably means but depends on what sense it is used. I have seen specialists without being consultants.

So Dr Kwon was an orthopaedic specialist and he was also a consultant?-- I would be guessing. I would say yes, employed as such.

Now, is it the case that while Dr Kwon worked at the hospital, you were also working at the Hervey Bay Hospital?-- Yes, I was but I just want to add that I was on leave for - I think in January and some of February to prepare for my AMC exams.

Would you have worked with Dr Kwon for about three and a half months?-- Yes, when I returned from my leave I did work with him.

Is it correct that while working with Dr Kwon, he was your supervisor?-- Yes.

And the manner of Dr Kwon's supervision, it was the case, was it not, that Dr Kwon would always be in theatre if you were operating?-- No, not always.

Mostly?-- What was happening when Dr Kwon was there was he was doing a lot of elective cases, and the joint replacements, or those things I have not been doing before, so he was doing all the cases and we were assisting him. But when it came to acute cases, most of the times he was available or he would come into theatre.

Did you say most of the time he was available or-----?-- He would come into the theatre.

Were there occasions, while Dr Kwon and you were each working, that Dr Kwon would be on call after hours?-- Yes.

If Dr Kwon was on call after hours, would that mean that he was available to assist you if there was a matter that you felt was beyond your capabilities?-- He would be available to assist, yes.

Can you compare, please, the degree of supervision that you experienced under Dr Kwon with the degree of supervision that you experienced when Dr Naidoo was the Director of Orthopaedics? Were they different levels?-- Sort of were but it is a bit difficult for me to be comparing for that short duration of time that Dr Kwon, simple reason being, like, in elective cases he was in theatre every time elective, which we were assisting him, and as for being on call, yes, he was almost on call every day and he was available whenever we needed him. That's seven days a week for that four months or how many months he was there.

And when Dr Naidoo was on call, was he available to the same extent that Dr Kwon was available?-- No.

Can you explain the differences, please?-- We have an on-call roster that has got various people on call and when Dr Kwon came in, he put his name on call every day as the consultant, so he was on call every day. With Dr Naidoo, the on call was shared by Dr Naidoo, Dr Mullen and the senior medical officers. So not every time - or when the senior medical officer was on call there was no consultant on call.

COMMISSIONER: Was Dr Naidoo readily available during all the times that he was in fact on call?-- When he is on call, after-hours we would probably not be on call, so we probably don't know about that because we were on call on different days, not on the same days.

I see.

MR ANDREWS: So is it correct that when you were on call in 2003 and 2004, Dr Naidoo would not have been rostered to be on call with you?-- After hours, no.

COMMISSIONER: What about during the daytime hours?-- During the daytime, the emergency calls were shared between the two SMOs that we had, but when he was in hospital I had no problems getting his opinion, when he was not on leave.

Was he on leave quite a lot?-- I mean, it is probably unfair for me to say whether he is on leave a lot or not because I don't know what his entitlements were.

Okay.

MR ANDREWS: Dr Sharma, you have just advised that when - during the daytime you were in emergency with another SMO, it was easy to get Dr Naidoo's opinion when Dr Naidoo was in the hospital. Were there occasions when Dr Naidoo was supposed to be on duty but not in the hospital?-- I don't recall any incident. Sometimes he may be at a different hospital, like Maryborough, and I am at Hervey Bay. So that may have been the situation, but I don't remember any time where I needed him when he was at work and I couldn't get him.

Hervey Bay is the only hospital within Queensland - that is Hervey Bay Hospital and the Maryborough Hospital are the only ones in Queensland at which you have worked?-- Yes.

It occurs to me, Dr Sharma, that your experience with Queensland's practices is likely to be a limited one, in the sense that you will only know what the practices are at the Fraser Coast area?-- That can be assumed, yes.

Do you recall that there was an occasion when, at the Fraser Coast, all SMOs were being placed on the consultant roster but a concern was raised by a VMO?-- Yes, I was made aware of that, yeah.

Was the VMO's concern that SMOs were being placed on the roster in circumstances where they were obviously not capable of being supervised?-- I mean, the concern was not brought to us; it was, I think, brought to the hospital, and that's how I knew it. So probably that is what his concern was but there was no direct communication by the VMO to us.

Thank you. The VMO who raised the concern, was that Dr Sean Mullen?-- Yes, that's correct.

And who brought this to your attention?-- Probably can't remember who the person was or how I heard of it, but it did bring a change in the on-call roster, the term that was used had been changed. So I think just through them we found out what the real issue was.

You observe at paragraph 15 of your statement that the report done by Drs North and Giblin was incorrect where it stated that you were asked to do full training. You say you were exempted from part 1 and asked to apply for advanced training with the possibility of reduced training time?-- That's exactly what is from the recommendation.

Let me put up the first page of the letter of the 25th of June from the Royal Australasian College of Surgeons. Do you recognise that letter?-- Yes, I do.

It doesn't within it expressly say that you were exempted from part 1. Is that an inference I should draw from some portion of the letter?-- Yeah, where it says to apply for advanced surgical training, and you can't get into advanced surgical training without doing the part 1 exams.

Now, I notice in the first of the paragraphs that I have highlighted there is an observation that your training qualification and subsequent specialist surgical experience in the field of orthopaedic surgery are not substantially comparable to that of an Australian-trained orthopaedic surgeon?-- Yes.

You were aware, were you not, that you were not registered as a specialist?-- Yes, I do. Can I clarify that statement a little bit further?

COMMISSIONER: Yes?-- The process of applying for qualification assessment has got certain decisions. One of them is, "Yes, your qualification is comparable, you don't have to do anything else"; (2), I think, "No, your qualification is basically useless, and do everything"; and third is the middle one, that's where I was assessed at. I have not heard of many orthopaedic assessments that have been taken as equivalent to Australian qualification from overseas-trained orthopaedic surgeons.

MR ANDREWS: Now, you have, since completing this statement - I beg your pardon, you have this year, in fact, applied, have you not, to the Australian Medical Council and successfully passed some of its examinations?-- I have actually passed the full set of the Australian Medical Council exams.

And you received its certificate issued on the 26th of February 2005?-- I have just received it recently, yes.

And that made you eligible to apply for general registration in Australia?-- Yes.

It also meant that you were free to approach any specialist medical college direct in relation to seeking specialist recognition?-- Yes.

Now, you did apply for general registration in Australia, didn't you?-- Yes, I have.

To the Medical Board of Queensland?-- Yes.

And have you obtained general registration from the Board subject to some conditions?-- Yes.

Would you - I will put on the monitor this document. Commissioner, I was going to tender - I beg your pardon, I was

going to tender the last document on the monitor but it is already an exhibit to Dr Sharma's statement.

COMMISSIONER: It is, yes.

MR ANDREWS: This is a copy, is it not, Dr Sharma, of a document you have received?-- Yes, that's true.

May I see the date? It appears, I think, on the monitor, and this is a document of the 29th of June 2005?-- Yes.

Does it explain to you further up the page, the conditions of your general registration?-- Yes, it does.

And they are supervised practice conditions?-- Emergency medicine and general surgery, yes, it says, yes.

Do you find it ironic, Dr Sharma, that there were supervised practice conditions imposed upon you after two and a half years' practice at Hervey Bay, having passed the AMC examinations when there were no supervised practice conditions imposed upon you when you were registered as an SMO in orthopaedics to fill the Area of Need?-- I would like to answer that question in a different way. Yes, I was surprised they wanted supervision, that was required of me from the Medical Board, because I think it was inconsistent, but - I did have the chance to appeal but I thought it would delay because I was trying to get into training program. At the moment, I am doing supervised practice in surgery and moving to emergency medicine soon to complete the requirements of the Board, yes.

COMMISSIONER: But the irony might be, doctor, that there wasn't a condition with respect to supervised practice when you were first registered. This is not a criticism of you personally; it is a criticism of the Medical Board?-- I think it is a difficult - at that time the registration was different. My registration was a restricted registration to work as a senior medical officer in orthopaedics.

But conditions could have been imposed on you?-- I think it has been changed to the recent registrants that are getting senior medical officer.

I shouldn't ask you to comment on that. Very well?-- But they did - as I said, I am a little bit surprised about these requirements because it is not consistent.

No, it isn't consistent. I agree with you.

MR ANDREWS: I tender that document.

COMMISSIONER: Yes, that will be exhibit number 358.

ADMITTED AND MARKED "EXHIBIT 358"

MR ANDREWS: Dr Sharma, I am going to put on to the screen a copy of a letter to you dated the 13th of March 2003. Do you recognise that as a form of letter-----?-- Yes.

-----from the registrar-----?-- Correct.

-----of the Medical Board, in a form similar to one you would have received also at about the same time in 2004 and 2005?-- Yes.

And it is the case, is it not, that so far as you were aware, there were no conditions imposed on your registration as for Special Purpose Registration pursuant to section 135.

COMMISSIONER: You are nodding. You mean yes, there weren't?-- Yes, there was none, sorry.

All right.

MR ANDREWS: And you were at all times aware that you weren't registered as a specialist?-- Yes, I knew that.

Did anyone explain to you at any stage what it meant that you were not registered as a specialist but you were registered as an SMO to fill an Area of Need?-- No.

Was it never explained to you that as an SMO, it was the convention in Queensland that you would be subject to the supervision of a specialist?-- Never mentioned to me.

When employed at the - in the Fraser Coast region, it is the case, isn't it, that you were never told - never had a condition imposed upon you by your employer that you must be supervised when practising as an SMO in surgery?-- Never.

SMO in orthopaedics?-- No.

And you are aware, are you not, from having seen the report by Drs North and Giblin, that one of the concerns raised in the report is that you and another SMO were not sufficiently supervised?-- Yes, I do but can I also - three SMOs in orthopaedics and two are mentioned in the report as not being supervised..

And the third SMO was?-- Dr Padayachey.

COMMISSIONER: He was at Maryborough, was he?-- He is - his daytime work was in Maryborough but when he was on call-----

Yes?-- -----he assisted down at Hervey Bay.

MR ANDREWS: Doctor, would you look, please, at the monitor where I'll put up the-----

COMMISSIONER: Was that last document exhibited to his affidavit - to his statement?

MR ANDREWS: May I be reminded, Commissioner, of what it was? It is on the monitor.

COMMISSIONER: It is the initial registration?

MR ANDREWS: No, I tender it, Commissioner.

COMMISSIONER: Very well, thank you. 359.

ADMITTED AND MARKED "EXHIBIT 359"

MR ANDREWS: Would you look at your annexure DS8 which appears on the monitor? Is that a copy of a letter you received from your employer?-- Yes.

On about the 7th of January 2003?-- Yes.

Setting out the conditions of your employment?-- That's correct.

And do those conditions appear on the second page?-- Yes, that's correct.

And is the only condition imposed upon you about your employment that you maintain registration with the Medical Board of Queensland?-- That's correct.

At paragraph 21 of your statement you observe that you were also-----

COMMISSIONER: Sorry, is that an exhibit already?

MR ANDREWS: It is, Commissioner. It's DS8.

COMMISSIONER: Okay. Thanks. At paragraph 21 you observe that you were supposed to have an RMO, but on occasions you didn't have one. By RMO do you mean-----?-- Resident medical officer.

And in the hierarchy, would a resident medical officer be someone who was your subordinate?-- Yes.

And do you raise that because it may be an explanation for why some persons may have said you were unwilling to be - to accept duties at other parts of the hospital?-- That was an issue - I think we'll come to it when we go into the details of it.

Is it your contention that there were times when you were expected to be at two places at once and that may explain why some people felt you were-----?-- Unwilling to work, yes.

-----unwilling to work. Yes. At paragraph 26 you refer to the yearly assessments Dr Naidoo made with respect to your performance, and I'll put one of them up on the screen. That's the first page. Do you recognise that it's a form that was filled in approximately annually?-- Yes.

And do you recognise that there's a - down the left-hand side there are a number of descriptors beginning with "clinical"?-- Yes, I do.

And on the right-hand side are a number of columns and there are ticks in the "exceptional performance" column?-- Yes.

And it includes a tick for procedural skills?-- Yes, it does.

Would you please turn up the second page. Your strengths were listed by supervisor as "pleasant, diligent and obliging" - can you read the rest?-- I can't read the next word, but I think "and good team member"-----

COMMISSIONER: What's the first one before "good team member"? What's that word there?

MR ANDREWS: Dr Sharma couldn't read it either.

COMMISSIONER: I see. I'm sorry.

MR ALLEN: It might be "colleague".

COMMISSIONER: Beg your pardon?

MR ALLEN: "Colleague".

COMMISSIONER: "Obliging colleague", yes, that's probably right.

MR ANDREWS: "Obliging" - I see - "colleague". At the bottom of the page do you recognise the signatures of yourself and Dr Naidoo?-- Yes, I do.

It's said that you were given feedback about the assessment. You will see "yes" is ticked?-- Yes.

You were given a subsequent assessment after 9 October 2004 in about June 2005. Is that the case?-- Yes.

Why didn't you include that subsequent assessment in your statement?-- I think this statement was prior to - concerning everything that was involved at that time.

Well, in fact your statement is signed on 27 July. Do you mean that you had it dictated-----?-- It was all prepared and I think the other one was at the time - for the papers of this third registration that I applied for.

I'll ask you to look at the assessment dated 16 June. Do you see that for this particular one, assessing your performance to the 15th of June 2005, Dr Naidoo's ticked, instead of "performance exceptional", simply "consistent with level of experience"?-- Yes, I do.

And if you see the second page of it, it contains - at the bottom of the page it shows your signature and Dr Naidoo's, and it shows that you've had formal feedback about the assessment?-- Yes.

Did Dr Naidoo explain to you why, on all indicators, he had marked you as "consistent with level of experience" rather than the two categories above which you'd been marked at just seven months earlier?-- No, he didn't.

COMMISSIONER: And you didn't ask him?-- No.

MR ANDREWS: I tender that document, Commissioner.

COMMISSIONER: That's Exhibit 360.

ADMITTED AND MARKED "EXHIBIT 360"

MR ANDREWS: Did you ever find that there were occasions when you wanted the help of Dr Naidoo, but he was unable to give it to you because he was in Brisbane?-- No, as I mentioned earlier, I didn't have that kind of situation at any time.

Did you hear from any other employees that they had a problem such as that?-- Again, I mean, I can't definitely say yes, a lot of people did talk about those things even prior to us

coming, but I mean, I don't know - it's second-hand information. I probably would not want to say much about it.

Are you doing your best not to criticise a work colleague?

COMMISSIONER: You won't be criticised for that?-- No, it's not that. I mean, if I was aware of that or if I had experienced that I could say it, but I couldn't say because other people are saying it. If I had that experience, I have no problems in accepting that.

MR ANDREWS: You say that people at SMO level are not expected to be supervised all the time. I see that in paragraph 31 of your statement. Of course an SMO might have a range of qualifications. An SMO might, for instance, even hold specialist qualifications. Isn't that the case?-- That is possible.

Well, an SMO who doesn't hold specialist qualifications who is an SMO in orthopaedics is a person who ought, I suggest to you, always have a specialist on duty. If not present at the hospital, but a specialist on duty with whom the SMO can consult?-- Could be on duty within the district, you mean, or-----

Yes?-- It would be better, but it's not happening. Not only in Hervey Bay. I could probably say probably in other hospitals in Queensland.

Well, how do you know that it doesn't happen at other hospitals in Queensland? Have you discussed with staff at Hervey Bay the endemic problem of SMOs being asked to do everything without a consultant to assist?-- No, I mean - as I have said, I don't think an SMO every time needs a consultant to be with him doing things, but it's not happening in medicine, it's not happening in obstetrics and gynaecology, it's not happening in anaesthetics, it's not happening in surgery-----

Is that at Hervey Bay?-- That's in Hervey Bay as well as - the reason I mention about Rockhampton is that before coming here I had also almost got a job in Rockhampton, and that was again as a senior medical officer, and again there was no consulting at that hospital, and at the moment - even now there's no consulting at the hospital, and usually the consulting doctor is in Royal Brisbane Hospital.

Now, it seems that your workload at Hervey Bay has been an extremely heavy one. Would you agree?-- I do agree. Workloads vary as well.

Beg your pardon?-- Workloads can vary at different times, particularly where emergencies are concerned.

While you were registered for an Area of Need as an SMO in orthopaedics, you were limited with your registration to working only in the Fraser Coast at the public hospitals?-- Yes, or any other hospital as approved by the medical

superintendent.

So if you were to complain that your workload was too high, perhaps so high that you would, for argument sake, be considering resignation, there would have been nowhere else for you to go to practise as a-----?-- That could be correct, unless I could get a registration from the hospital.

Yes. I don't understand what you mean at paragraph 37 where you say, "Because of the number of consultants present, the SMO and the consultant on call share the same responsibility."?-- I'll clarify that. What I meant was, ideally, in any department there is a principal house officer and a consultant on call. In orthopaedics we didn't have a principal house officer, just the senior medical officers and basically one full-time consultant, so call was shared by the consultant and the three SMOs.

Ideally there would be a consultant on call at all times?-- If possible.

But at Hervey Bay, because there was only Dr Naidoo for long periods of time as a consultant, there were many occasions when he was not put on call. Is that what-----?-- Yes, that's correct.

Now, you agree that's not ideal?-- It's not ideal as far as - I mean, a lot of times two minds work better than one, and no matter how senior or experienced, even an orthopaedic surgeon would be willing to discuss cases if somebody is around, with another colleague.

And theoretically an SMO who doesn't hold specialist qualifications would benefit, particularly if there were a consultant on call?-- I would have benefited in the sense that it will help me with my accreditation for college training.

Quite apart from helping you with the advancement of your career, it would also be a matter that would help you to deliver best patient care, wouldn't it?-- Yes, yes, that's correct.

Do you agree, doctor, that - are you able to say whether the Queensland practice is that an SMO in orthopaedics who does not hold specialist qualifications is assisted by a consultant on call for the purpose of delivering appropriate patient care?-- Again with my limited Queensland Health experience, I think - whether I should be making a comment on that as far as Queensland Health is concerned, but from my side I'll say it's better to have a more senior, more experienced person available for consultation.

Thank you. I've nothing further, Commissioner.

COMMISSIONER: Thank you. Who wants to ask questions of Dr Sharma?

MR ALLEN: Just briefly, Commissioner.

COMMISSIONER: Yes.

CROSS-EXAMINATION:

MR ALLEN: Doctor, I appear for the Queensland Nurses Union and for one of its members, Ms Theresa Winston?-- Yes.

She's a person you refer to, is she, at paragraph 24 of your statement?-- Yes.

Okay. Now, you discussed ward rounds which would occur in a morning in the surgical unit of the hospital?-- Yes.

Are there two separate disciplines of medicine which relate to patients in the surgical unit?-- It could be two, it could be even more patients. It could be just surgical or-----

All right. But there is at least two in the sense of there being a surgical team and an orthopaedic team?-- Yes.

And it was not uncommon that when the orthopaedic team of which you would be a member was doing its rounds, that the surgical team would also be doing its rounds?-- Yes.

You would agree that if those rounds are occurring at the same time, it wouldn't be possible for the Nurse Unit Manager to be present throughout both rounds?-- I think my point has been missed here. What I'm trying to say is-----

No, can you answer the question?-- What-----

It would not be possible for a Nurse Unit Manager to go on the round with the surgical team and on the round with the orthopaedic team at the same time?-- Another nurse could, but not the same person at the same time.

All right?-- You don't need a Nurse Unit Manager every time. It either has to be one of the nurses.

Is it the case that on the whole the surgical team would have a larger number of patients to see?-- I mean, it's difficult to say now, because at the moment there's basically no orthopaedic services, but at the same time I don't know about the figures.

At the time that there were orthopaedic patients, would it be fair to say that there were generally more patients for the surgical team to see than the orthopaedic team?-- It's difficult for me to answer that question.

All right. And I'd suggest that it was more common for the Nurse Unit Manager to accompany the surgical team than the

orthopaedic team?-- Yes, partly on the days that the SMOs were doing rounds, about usually would be present when the consultant was doing rounds.

Was it more common on those occasions when the SMOs were doing the rounds that the Nurse Unit Manager would accompany the surgical team rather than the orthopaedic team?-- Yes, that's correct. Another nurse will accompany the orthopaedic team.

Was it the case that on occasions the Nurse Unit Manager did accompany the SMOs during the orthopaedic team's round?-- When Dr Naidoo or the consultant was doing rounds, yes, on Tuesdays and, I think, Thursdays she would come.

And you maintain never on any occasion when it was only the SMOs and the RMO doing the orthopaedic round?-- I don't remember any occasion when she did attend rounds during the time of this - the inspection, but I think I mention in my report that from the beginning of this year it's changed.

We'll come to that, but dealing with the situation before that, was it true that when the orthopaedic SMOs would arrive on the ward, the Nurse Unit Manager would go through the patients on their list with them, she would discuss the patients on the list with you and tell you of any changes which may have occurred throughout the night or any other specific matters of importance in relation to their clinical care?-- I don't think that was happening very frequently, no.

Do you recall any occasions when that would happen? When you would arrive for your round-----?-- Yep.

-----and the Nurse Unit Manager would go through a list of patients, bringing particular matters in relation to particular patients to your attention?-- I don't know whether it was before the rounds or maybe after the rounds. Sometimes we do talk, yes, yes.

Yes, and if the Nurse Unit Manager had particular concerns about a patient, she would in fact leave the surgical team round to join the orthopaedic team when they saw that particular patient?-- I don't remember that happening.

You don't remember that happening?-- No.

Now, the Nurse Unit Manager would accompany the consultant during the consult's orthopaedic rounds?-- Yes.

They were twice a week?-- Yes.

And they were performed at a later time than the other orthopaedic team rounds?-- No.

Dr Naidoo would start at about 9 o'clock, 9.30?-- That's for - I think on one of the days, not both the days.

All right. But that would be at a time later than the surgical team round?-- One of the days, yes.

And would therefore permit the Nurse Unit Manager to attend both on those days?-- That all depends how long the other ward round takes.

I suggest that it's not true to say that other nurses were never made available to accompany the SMOs on orthopaedic team rounds?-- I think whatever I've said, that was my experience, and part of the problem was because there was nobody coming to the ward rounds to give all the information to.

I suggest that the orthopaedic team rounds conducted by yourself and Dr Krishna were inadequate?-- I disagree with that.

That you would not check wounds?-- I disagree with that.

You would not ask patients to mobilise so as to check their condition?-- I disagree with that.

You would not allow the resident medical officer time to record information in patient files?-- I can't comment on that.

Your practice was that the resident medical officer would write notes on a piece of paper during your round and then would have to go back to transpose information into patient files at a later time?-- That wasn't my practice. I mean, what the resident medical officer did or how - some of them directly wrote on the chart, some prefer to write on the patient list that is available at the ward, and some do have separate pieces of papers where they write, but it wasn't consistent. It depends on the RMO.

Did you feel any role in supervising RMOs in relation to their documentation?-- I mean, we had discussed about this - and this was even discussed with the Director of Hospital Services - and the suggestion was yes, RMOs should be doing the writing, and it's very difficult for us to be seeing every time what they're writing.

But why didn't you maintain some type of consistency of approach of the RMOs?-- I don't know whether there was any consistent approach. Like at the moment now, I am doing the other surgical duties, and I do write at the moment on the ward rounds. It basically depends on the RMOs, what they want to do.

Last year it wasn't the practice during your rounds that the trolley with patient files would be brought on the rounds so that notes could be made in charts?-- Again, the trolley with the patient charts is usually being looked after by the RMO during ward rounds.

It wasn't your practice on rounds to review the patient's medication chart?-- Usually - again, medications are charted on admission, or if there are changes then that is brought out in the ward rounds, and most of the time the medications were

- basically everything in the ward was checked by the RMOs, or the nurses consulted us and we would also be involved with it.

It wasn't your practice as a senior medical officer to review the patient's medication chart during rounds?-- We did revise as far as the orthopaedic, like, antibiotics that we use or the new medications that we have been using, but any that the patient was on previously that is probably for other conditions, we usually left to the RMO or the other department doctors if the need arose whether we need to assist them.

You didn't check the patient's fluid balance charts?-- All patient's fluid have, and some patients require that to be checked and we checked it.

I suggest you didn't check the observations charts?-- That's not correct. I mean, that has the temperature, pulse and blood pressure and everything, and we check that.

I suggest that rather than asking patients to mobilise so as to check their condition, you would simply direct that "discharge if okay by physio"?-- I think that needs to be clarified. Patient mobility - we decide whether the patient is fit to be mobilised and whether the patient can put weight on the particular limb or not, and when it comes to training of the mobility it's the physiotherapist, and it's the physiotherapist that describes the competence of the patient, whether they can manage with the walking aids that they have. So it is the physiotherapist or the occupational therapist, whoever is involved, yes.

One of the difficulties with the practice that you permitted of notes not being made in patient's charts during the morning rounds was that such notes would not be available to allied health staff such as physiotherapists who might see the patient soon afterwards the same morning?-- I was not made aware of any such problem.

Well, it's a logical fact, isn't it, that if the patient notes aren't updated at the time, they may not be available to other staff who would see them soon afterwards?-- Again, I mean - again, that is being dealt with by the RMO. I mean-----

The RMO. Now, you make some criticism of the fact that nursing staff would go seek information as to the medical condition of patients from the RMO?-- Yes, I did, because there was nobody when we were doing the ward rounds. When we finished the ward rounds, we'd go to clinics or theatres. The RMO is the only person in the ward, and they try to get information from the patient because there's nobody else around during ward rounds to take or give information.

The problem is you haven't recorded any information in the patient's charts?-- Again - I mean, the practice is almost always it's the RMO that records whatever is said in the ward rounds.

Let's look at the basis of this criticism. You say that you've gone off to clinic or theatre, the RMO is the only doctor available on the ward, the RMO has been there during the round, hasn't yet recorded the information in patient charts, but has it in his mind or her mind-----?-- Yes, but I-----

Why do you criticise the nurses for going and trying to get that information from the RMO?-- The simple solution to that is - I mean, as I said, this was just an example that I was giving. When we have issues, it's easy for the nurse to say, "I am busy" or "occupied somewhere else", but they expect us to be available for everything. It has to be both ways. I mean, we are accepting here that it's okay for the Nurse Unit Manager to be occupied elsewhere and can't come here, and you're not trying to accept a doctor who is doing something else - or she doesn't accept the fact that the doctor is busy somewhere else, but expecting the doctor to come and do something else in the ward. I'm trying to compare that. That's the only thing I'm trying to do.

We're all aware that both doctors and nurses are overworked in the public health system?-- Yes.

Isn't it, therefore - if it's not possible for a nurse to be able to accompany the doctors physically on a round - important that the patient's charts be updated so as to reflect the doctor's observations?-- Yes. I mean - and I'm not aware, I mean, which charts they're referring to, which ones are not updated and how frequently that was not happening because, as I said, that issue was not brought up often. Once or twice that I know, and we had spoken to the RMOs involved, but I don't think that had been coming up regularly. So I don't think it was a regular thing that was happening, and as I said, different doctors are practising differently.

I suggest that matters changed upon the commencement of Dr Kwon as consultant at the hospital in relation to ward rounds?-- In relation to - yes, sir.

And they changed in that Dr Kwon would do a round after the surgical team had finished their round along with the Senior Medical Officer and Resident Medical Officer?-- I don't think that was the practice. I'm not too sure about the timing of the ward rounds, when that was happening.

He tried to manage things so that the Nurse Unit Manager would be able to have a greater opportunity to attend the orthopaedic team round as well as the surgical team round?-- Not necessarily the Nurse Unit Manager. We had at least a nurse attending the ward rounds, not necessarily the Nurse Unit Manager.

Did Dr Kwon tell you that if - that you were to contact the Nurse Unit Manager at the end of your round and let her know of any changes to patient management?-- I think when the decision was made, I was on leave initially when Dr Kwon started, but I did come to find out about it later on, yes.

You became aware of that direction from Dr Kwon after return from leave, did you?-- Dr Krishna.

From Dr Krishna. But you in fact didn't carry out that direction?-- That's incorrect.

And is it the case that the way you conducted the rounds changed under Dr Kwon's supervision?-- All things changed. The clinic changed and the duty roster changed, which gave us more time to actually be available for other duties, yes.

But wasn't it the fact that your practices changed and that you would spend more time with the patient, record notes in the patient's files or allow the RMO to do so at the time?-- I don't think there was a change in the time that we spent with the patient, no.

You would in fact - you improved your practice by taking more time to speak to the patient and ask them to mobilise where appropriate?-- No, no, I think there was no change in that. That was what was being done before.

I suggest that the improvement was by way of observation of Dr Kwon and really learning how you should do your job properly?-- I disagree with that.

Those are the only matters I have.

COMMISSIONER: Thank you. Do you have any questions?

MR DEVLIN: Thank you, Commissioner, I have some.

CROSS-EXAMINATION:

MR DEVLIN: Doctor, my name is Ralph Devlin. I'm counsel for the Medical Board of Queensland. I just want to ask you this: were you in any doubt that your consultant supervisor was Dr Naidoo at the time you started?-- No.

And going to the board's file for a couple of other additional documents beyond what counsel assisting showed you, perhaps this can go up on the board. Just, if we see the top of the document first. It's called a "Form 1 Area of Need Position Description for Completion by Employer" but it seems to apply to you and to the position to which you were appointed at the outset. Do you agree?-- Yes.

If we slide that down, thanks, Mr Operator. Further down. Keep going, thank you. So special skills required - by the way, did you ever see this form, form 1 do you believe or aren't you able to say-----

COMMISSIONER: What's the date of this? Have you got a date on it?

MR DEVLIN: It's associated with the first application. I've taken steps to have the board's file - it's associated with other documents.

COMMISSIONER: Well, do we have a date though? Can you tell us what the date is?

MR ANDREWS: Approximately January 2003 from my reading of the board file.

COMMISSIONER: All right. Do you agree with that?

MR DEVLIN: Yes.

COMMISSIONER: All right.

WITNESS: I'm sorry, I can't remember seeing this document.

MR DEVLIN: Okay. So it's a form that the employer fills out anyway and it seems to apply to you?-- Yes.

And you'd accept that it gets to the Medical Board?-- If it is a requirement, yes, sir.

Thank you. So it speaks of your special skills. You'd had at least five years' experience post intern; was that correct?-- This was in January - this is 2003?

Yes?-- I did my internship in 1998 so it's-----

So it understates your experience a little bit?-- Yes, yes.

At least four years' experience in orthopaedics; is that a

correct statement?-- No.

So that understates your experience in orthopaedics?-- Yes.

Okay. Supervision available, the employer, your employer at Hervey Bay says, "Supervision by a staff specialist business hours and as necessary after hours." Now, did you understand Dr Naidoo to be a staff specialist?-- Yes.

Thank you. Did Dr Naidoo supervise you business hours and as necessary after hours?-- No.

No. And is that partly because, for example, when you were on the roster, Dr Naidoo was not?-- That's correct.

And whilst we're on that topic, is it that very feature of your employment which you believe has made it difficult for you to achieve accreditation for specialist training?-- It may have contributed to it but there are other issues involved, yes.

Contributed to it.

COMMISSIONER: How would he know unless he was told that?

MR DEVLIN: I asked him if that was his belief.

COMMISSIONER: Well, it's not a very useful piece of evidence unless someone told him that.

MR DEVLIN: Thank you. I'll proceed. In relation to consultant advice available, the employer has said to the Medical Board, "Consultant advice and/or assistance is available 24 hours a day seven days a week." Did that prove to be an accurate statement?-- If there are consultants in the centre or in Hervey Bay.

I'm sorry?-- If it just involves within the district, then it is not but if it involves Royal Brisbane or a different centre, then yes.

So is - do we understand from that that you tried to get consultant advice at a particular time within the district and was not successful in getting that advice?-- No.

I thought you said earlier that you didn't really have any problem getting assistance from Dr Naidoo when you sought it?-- When he was around and, as I said, during business hours, and not after hours when he was not on-call.

Right.

COMMISSIONER: And not when he was away?-- Yes.

MR DEVLIN: Yes. But do we understand from your answer that you could contact a larger tertiary hospital for advice from a consultant?-- Usually a senior registrar or registrar at a tertiary hospital. That's the first point of contact that

you-----

Very well. The form then states at the bottom by way of comment, "Dr Sharma is known to a Senior Medical Officer currently employed by this district." Did you know a Senior Medical Officer employed in that district prior to taking up the employment?-- I'm sorry, I didn't get the question.

Did you know another Senior Medical Officer employed in that district prior to taking up your employment?-- Yes.

Who was that?-- Dr Krishna, who was a colleague of mine in Fiji.

Thank you. And it seems that the notation is that that employee has vouched for your high level of skills, do you see that?-- Yeah.

Now, if we just go to - that's form 1, Commissioner, in the initial application for Area of Need certification. I tender that into the record.

COMMISSIONER: Right. That will be Exhibit 361.

ADMITTED AND MARKED "EXHIBIT 361"

MR DEVLIN: Thank you. If you could just have a quick look at this one. And that's a form 2 bearing your name and that's in your handwriting, is it?-- That's correct, yes.

And then if we slide down to the bottom, you have signed that document as form 2 to your first application for employment within an Area of Need?-- That's correct.

Thank you. I'll tender that into the record, perhaps with - together with the other exhibit if that's convenient.

COMMISSIONER: Right. They can both be Exhibit 361.

MR DEVLIN: Now, fortunately, the next document has a date on it. Were you aware that you needed to re-apply each 12 months for this position within the Area of Need?-- Yes, I do.

Now, again, if we go to the top of the document, sorry, the form number, if we can see that at the top, please. So that's a form 1 again Area of Need position description bearing your name and the correct position?-- Yes.

If we go down to the bottom then again, this time we see a signature on behalf of the employer, this time with a date on it 12th of November 2003, which would have been approaching the time for re-registration as a medical practitioner in an Area of Need; correct?-- Yes.

The first period was up in about the February of 2004; correct?-- I think so.

Early in 2004?-- Yes.

Thank you. And again, we see those matters of supervision and consultant advice availability restated by the employer to the Medical Board?-- Yes.

Thank you. I'll tender that into the record.

COMMISSIONER: 362.

ADMITTED AND MARKED "EXHIBIT 362"

WITNESS: Again, these documents, I was not shown them.

MR DEVLIN: You did not see them, thank you. And then the companion document then. These appear seriatim in the file, Commissioner, but unfortunately this one doesn't bear a date. The form 2 for your re-registration bears your name in your handwriting; correct?-- Yes.

And then down the bottom your special discipline is described as orthopaedics and the form bears your signature; correct?-- Yes, it does.

Thank you. I'll tender that as a companion document.

COMMISSIONER: Right. That will be part of 362.

MR DEVLIN: Now, I think counsel assisting showed you the assessment form that goes with that and I'll need your assistance there, Commissioner, as to - there's an assessment form around about Exhibit 359.

COMMISSIONER: Well, I don't have that.

MR DEVLIN: I can simply put up a fresh one.

COMMISSIONER: I think it might be 360.

MR DEVLIN: I'll put up a fresh one. 360.

COMMISSIONER: Just check, will you.

MR DEVLIN: I'll put up a fresh one just to save time.

COMMISSIONER: All right, do.

MR DEVLIN: Perhaps we can have it back then. So this is the assessment form that counsel assisting showed you bearing your name?-- Yes.

If we go to the second page of it, and we've seen those favourable comments there, but it's headed, "Supervisors must comment on the following." Did you, during your employment, see Dr Naidoo as your supervisor?-- Yes.

Thank you. Down the bottom then, the signatures are from you as the registrant on the 19th of November 2003. So this is preparatory to your application for re-registration as a practitioner an Area of Need; correct?-- Yes.

Thank you. And then Dr Morgan Naidoo signs as your clinical supervisor?-- Yes, that's correct.

And you saw him in that role?-- Yes.

Thank you. If I can have that one back since it's already Exhibit 360 as I understand it. I want to take you to what other people have said about supervision of you and ask you whether you agree or disagree. Perhaps we'll take ourselves to what you yourself have said and I'll put that up. Paragraph 31 of your statement. Just the shaded bit, please, Mr Operator, down the bottom. You say, "As for supervision, I said to the investigators that I had no problems when the consultant was around and that during on-call hours there was none available. I always discussed cases before surgery when needed and would get the consultant into theatre when needed. I did not have any problems with communication between the leadership of the hospital. I would also like to comment that people at SMO level are not expected to be supervised all the time." So it appears that - they are true statements, are they?-- Yes, based on the definition of supervision that's - based on the level of supervision that has been stated in the AOA report.

AOA report. What do you have in mind when you say that - the level of supervision?-- The AOA report has recommended that a supervisor should be present in theatre at all the time.

And, of course, that was not your experience?-- That's not my experience and I think it's probably not needed as is stated in other places, that even during our training time we have performed surgery without the supervisor being in theatre.

Right. Thank you. And would you feel the same even if you worked in a big tertiary hospital where more consultants might be available?-- Again, it's a different with different consultants. One of the things I would like to mention here is when Dr Ming Kwon came, he stated straightaway, "I have just come out of the training and I don't want any issues so I will be" - he will be available every time and he will come to theatre, even if he doesn't do anything, he will be with us in theatre. Whereas a consultant who has been operating for long periods of time who has probably seen you operate might have different opinion as to what kind of supervision you need.

So it comes down a little bit to the particular practitioner's style?-- Yes.

Thank you. If I could have those pages back. I'll show you what Dr Krishna says and ask if you agree or disagree.

COMMISSIONER: What's the concern of the Medical Board in this evidence?

MR DEVLIN: The sufficiency of supervision given or not given by Dr Naidoo.

COMMISSIONER: How does that affect the Medical Board?

MR DEVLIN: It may be relevant to the conduct of some procedures. Dr Mullen makes claims about deficient procedures and the Medical Board has-----

COMMISSIONER: Well, he has given evidence about that.

MR DEVLIN: I beg your pardon?

COMMISSIONER: He has given evidence about that.

MR DEVLIN: Well, I asked for his examination on particular procedures to be delayed until patient charts are available. They have been made available and we're still chasing one and I would be proposing to take Dr Mullen to the specific claims he makes in his statement now that the charts are available and pursuant to the board's-----

COMMISSIONER: Well, the claims, they're evidence, but you can call them claims if you like.

MR DEVLIN: Well, the board is simply trying to assist the Commission in teasing out the evidence in relation to specific procedures to see if there is any evidence of unsatisfactory professional conduct by any medical practitioner which is squarely within its legislative charter.

COMMISSIONER: All right. I'm getting a lot of assistance from both sides in this matter, those who appear for various doctors and for the - for Queensland Health. I'm not sure that I need additional assistance from you, but go ahead.

MR DEVLIN: Thank you. Doctor - if you could go up a little bit, please. Dr Krishna at paragraph 22 says, "As far as supervision of SMOs were concerned, Dr Naidoo was the only specialist providing some supervision during the week except for when he was on leave", and then he describes the activities. Do you agree with paragraph 22?-- I think Dr Mullen was also available when he was working for Fraser Coast-----

Who was that, sorry?-- Dr Sean Mullen. He was the other consultant that was available on other occasions, on several occasions.

Dr Krishna says at paragraph 23, "Dr Mullen had sessions at the hospital for one day a week and he was not available for supervision." That was not your experience?-- No, actually, I

had a clinic on the same day at the same time that Dr Mullen was having clinics and on many occasion I took his opinion and advice in the same clinic. So, as far as I was concerned, he was a supervisor.

Thank you very much. If I could have that back then, please. Now, Erwin-Jones, do you know her, Dale Erwin-Jones?-- Yes, the area manager, yes.

Thank you. We'll just see what she says about this. The first one relates to Dr Krishna but I'll just ask you if you agree or disagree with her observations in your own experience. "If he got into trouble" - do you see this at the middle of the paragraph? "If he got into trouble during a case, he" - that's Dr Krishna - "always tried to get the assistance required. However, that was rarely forthcoming from either Dr S Naidoo or Mullen." Was that your experience?-- No.

Thank you. And over the page then she refers to you directly, paragraph 32: "My advice to the investigators was that Dr Sharma worked within his scope of practice and if he required assistance, would try to get it. Again, often this was refused or unavailable." Do you agree or disagree?-- I disagree.

Thank you. May I have that back, please. Dr Mullen says this: "I was starting to get more and more frustrated with lack of action in what I perceived to be a dangerous situation for patient safety given the lack of supervision of these non-qualified doctors." Apparently, one of them is said to be you. "The other problem that arose at that time was the large amounts of leave that Dr Naidoo was taking at that time, often four to six weeks at a time, where the two new doctors were left with no supervision at that time and were acting as autonomous surgeons and treating and operating on patients as if they were qualified surgeons without any supervision." Firstly, do you recall being left four to six weeks at a time without having recourse to Dr Naidoo?-- I probably would not be able to give a time frame but, yes, there has been occasions, probably not say what duration. It may be, it may be more than that or may be less than that. I'm not too sure about the total times that Dr Naidoo was not available.

Yes. And really, supervision is a definitional matter, isn't it?-- Yes.

You felt free to consult with Brisbane and with Dr Naidoo when available and with Dr Mullen when available?-- Yes.

But if supervision is meant to be somebody standing over your shoulder, that did not happen for you?-- Can you repeat, please.

A consultant standing with you in the operation, that did not happen for you very often?-- It did happen. Like, as I said, when I was working with Dr Mullen, I would book elective cases in his list and he would probably do it and show me how it's

done his way.

You had that experience with Dr Mullen?-- And Dr Naidoo too. I assisted him on many occasions and he would give me certain things that I have not done before, so I was not expecting to do it on my own but Dr Naidoo did teach me and give me the chance to start doing things.

And, Dr Sharma, you seem to have said fairly and squarely earlier on that there was never a procedure in which you felt the need for supervision by a consultant and did not get it. Is that true or not?-- I mean, I'm just trying to recall and I don't remember any time that if I needed them, I couldn't find them.

You just can't give us an instance where you felt wanting for lack of input from a more experienced and qualified person?-- Or more hands.

Or more hands?-- Yes.

Thank you. If I could have that back, thank you. Just on a couple of matters that Dr Mullen raises then which may be relevant to you. Paragraph 24 of Dr Mullen's statement - it's actually 24 to 26. He speaks of a patient who had been involved in a motorbike accident and had received a fractured femur. We're not sure what patient name that would be. It would either be P431, P432 or P433.
But do you recall any circumstances relating to a bike accident followed by a fractured femur in
the right leg where there was an operation by the two new doctors, being yourself and Dr Krishna?-- Yeah, I mean, according to the list of patients, it is probably the first, P433 but I haven't, unfortunately, had a look through the charts and I think that is not the right patient. This patient was actually operated in September '02 and I was not there at that time.

So we can eliminate P433?-- Yes.

Does a patient called P431 or a patient called P432 - no, I'll tell you this. P432 stepped in a hole at work so we can eliminate him?-- Yeah, it's different.

So what are we left with, P431.

MR FARR: Commissioner, I can indicate that the hospital can find no record by a patient of that name.

COMMISSIONER: P431.

MR FARR: Which was the name that we were supplied with. As I understand it, that information was conveyed to Dr Mullen who then provided us with the name of P433. That would seem to be incorrect as well. So we're in the dark at the moment as to who this - these paragraphs might be referring to.

COMMISSIONER: Mmm-hmm. Right?-- I do have a vague recall

about this patient that Dr Mullen is trying to refer to.

Yes?-- I would be able to answer some questions but-----

Do your best then if you do have a recollection of a patient?-- It may not be a hundred per cent accurate but I'll try.

No, no, just go ahead.

MR DEVLIN: Can you put a name to the patient at all?-- Definitely not.

Okay. Well, let's just see what he says about it. He makes an opinion about whether Dr Naidoo should have been present or not. But then he describes that the patient had lost a lot of blood and the femur has been subsequently significantly fractured during a procedure where a nail had to be inserted into it. Does that assist you at all?-- Yes, I can recall this incident because we had - did have a discussion with Dr Mullen outside.

Did Dr Mullen, as he says in his statement there, take over the care of the patient?-- Actually, as far as that fractured femur was concerned - I mean, I was not the surgeon but I was scrubbed for the case - that was not done by Dr Mullen, it was completed by Dr Krishna actually. But this patient had other injuries that I think - which was late in the afternoon, Dr Mullen was on-call and he did take over the management of the other part of the injury.

I see. So there was ongoing care of different injuries at different sites, that's what your memory tells you?-- Yes, yes.

What about what he said at paragraph 26: "I indicated to Dr Sharma after the case", et cetera?-- Yes, I mean, the reason I said yes was because this was a procedure that I have never done before so I would definitely have got somebody in to do it for me and to show it to me. But, again, I assume that as Dr Krishna has been working in this country and he had done that procedure, so he did it, and I wanted to have a look at it too so I was in theatre assisting him.

Did you express to Dr Mullen - just have a look at the last two lines: "concern about the lack of supervision you were getting from Dr Naidoo"?-- Regarding this case, yes, but, again, I don't know that Dr Krishna had discussed with Dr Naidoo or Dr Naidoo was around at that time or not but my opinion was this was a case if I was doing it, I mean, I would not do it alone.

If you were constantly not getting the support you needed from Dr Naidoo, you would tell us?-- I don't know. I mean, I probably would think about it because our employment and things are in the hands of the supervisors whether we do and whether it can work against us.

Do you not deny that you expressed concern at the time about the lack of supervision that you were getting from Dr Naidoo, or do you have a different recollection?

COMMISSIONER: He already has said he had a recollection and he did express concern about the lack of supervision he was getting from Dr Naidoo in that matter.

MR DEVLIN: I will leave it there, thank you. They are all the questions I have, thank you.

COMMISSIONER: Thank you. Yes, Mr Farr?

RE-EXAMINATION:

MR FARR: Thank you, Commissioner. Dr Sharma, you have had the opportunity, I understand, before giving evidence of having a look at the patient charts for the patients that Dr Mullen-----

COMMISSIONER: Does Dr Sharma know you represent Queensland Health?

MR FARR: Yes, he does.

COMMISSIONER: All right.

MR FARR: That Dr Mullen has referred to in his statement and by a subsequent list that's been provided, that's correct?-- Yes, I managed to see them last night, yeah.

All right then. And you are able to, as I understand it, assist us as to which of those are of any relevance to you, that's correct?-- Yes.

And if we could just deal with them one at a time, and we will deal with paragraph numbers as well because paragraph numbers have been referred to on some days past. But in paragraph number 31 - and I will have to name these patients, Commissioner, just for the sense of the record - is a P434. That, in fact, is a patient that had an injury prior to you commencing-----?-- That's correct.

-----employment at the Hervey Bay Hospital?-- That's correct.

And is your only interaction with that patient that about nine months after his operation he presented at the fracture clinic

with complaints of continuing pain?-- Yes, he didn't have an operation, he did have a manipulation.

A manipulation, I am sorry. As a result of that consultation, did you and Dr Naidoo discuss what was considered to be the appropriate course?-- Yes, I had seen this patient approximately nine months after the injury and the concern was he was still having pain and some difficulty in movement, so I did order an X-ray which showed that the fracture had healed, but in about eight degrees of angulation, and I think he was 16 years old at that time. Because of this angulation and continuous problem with it, I discussed the X-rays with Dr Naidoo, and his recommendation was, "Let's wait and see what happens because the bone has healed and we will observe him and review him later on."

And did you discuss with Dr - well, did Dr Naidoo discuss with you that his opinion to give him more time and see him again at some future stage-----?-- Yes.

-----partially depended upon the fact that he is so young he might be still growing?-- Yeah, he was 16, just sort of borderline age for people to what we call remoulding of the bone.

The patient, I take it, was advised-----?-- Yes.

-----of that option?-- Yes.

Of that direction, and is it your understanding that the patient at some subsequent time to that presented at Dr Mullen's surgery where matters went from there?-- That's correct.

All right. Was that your only interaction with that patient?-- That's correct.

Paragraph 32 of Dr Mullen's statement, Commissioner, we still don't know the name of that patient, so I am afraid I can't ask this doctor about that at all. We're still attempting to find that person - identify that person.

COMMISSIONER: You can ask him about by reference to the facts, I suppose.

MR FARR: Well, I can do that. In paragraph - do you have a - you have seen paragraph 32. Do you-----

COMMISSIONER: Perhaps you can put it up on the screen for him.

MR FARR: Excuse the notations. I note the doctor has a copy.

WITNESS: Yes.

MR FARR: Do you have any recollection of a patient consistent with what you read in paragraph 32?-- Actually, even the hospital records didn't show me that I had seen this patient

at any time.

COMMISSIONER: Didn't say that you had seen the patient?-- No.

Do you have any recollection of that incident?-- No.

Even though it had nothing to do with you?-- No.

You don't.

MR FARR: Thank you. The next paragraph, 33, is said to be a patient by the name of P435. You have seen the records for P435-----?-- Yes, I have.

-----overnight. Again, that was an operation that you didn't perform, that's correct?-- Yes.

In fact, it occurred at a time when you were on leave?-- That's correct.

That was in January of this year?-- That's right.

You came in whilst on leave for two days due to the ill health of Dr Krishna?-- Yes.

And do I understand it to be the case that you may have seen P435 on ward rounds during that two days?-- Yes, she was admitted - the only thing I didn't check about the dates was whether it was when I returned from my leave that she was admitted, or if it was in those two days that I have come in.

In fact, she had later admissions, as I understand it?-- Yes.

In relation to some infection?-- Yes.

And you may have seen her on ward rounds at that time?-- That's correct.

And is it the position that you are not entirely clear whether you saw her in the ward rounds in the two days when you returned because of the ill-health of Dr Krishna?-- Yes.

Or in subsequent ward rounds when she had the infection?-- The initial time when Dr Krishna was sick.

All right. Whatever time it was, that is the extent, as I understand it, of your interaction with that patient?-- Yes, but I do remember the patient was in one of the ward rounds that I attended but the time I don't remember.

All right. Is it the case that the notes often don't show who conducts ward rounds or who was present for ward rounds?-- Sometimes only the consultant's name will be mentioned or no names will be mentioned.

All right. Thank you. Paragraph 34 is a Mr P436 and that had nothing to do with you?-- No.

Thank you. Paragraph 37 is an P437. Again, had nothing to do with you?-- The patient in paragraph 37 was actually one of - done by Dr Mullen but I did see the patient at the ward rounds post-operatively.

That was the extent of your interaction with that patient?-- Yes.

The only other - whilst we're doing this, just for completeness, the only other patient that Dr Mullen speaks of appears in paragraph - commences at paragraph 6 of his statement, which is a P430. He spoke of that as being a 2002 incident in his statement, although he corrected that in evidence and said it was the year 2000, but on either event you hadn't started until March 2003; that's correct?-- Yeah. But the other point I would like to mention, Commissioner, here is in the area of the report it says it was the Director of Orthopaedics and SMOs involved in the management of this patient in the year 2000 when none of us were here at that time.

You started in March of '03?-- Yes.

I think Dr Krishna had started about six months or so prior to you?-- Yes, some time in 2002.

All right. Thank you. You spoke to Mr Andrews earlier of having spent, I think, six months or so at a hospital in Newcastle back in 1996?-- Yes.

And do I understand your evidence to be that there were occasions at that - I take it that was a big hospital?-- Yes.

And I take it - sorry, I understand your evidence to be that whilst at that hospital at that stage there were some procedures that you had performed without having a consultant or a specialist in surgery with you at the time?-- That's correct.

Yes, that's all I have, thank you.

COMMISSIONER: Thank you. Any re-examination, Mr Andrews?

MR ANDREWS: Yes, please, Commissioner.

RE-EXAMINATION:

MR ANDREWS: May I have the form 1 in Exhibit 361? I think 361 comprises two documents.

COMMISSIONER: Yes, it does.

MR ANDREWS: Dr Sharma, the form 1 which is on the screen, is

a typed document, that anything that's been inserted in it in the right-hand column you will see seems to be typed. There are some things inserted towards the bottom of the page. As I recall one of your answers, I thought that you'd agreed that you filled in this document?-- Sir, no. The second part, if you look at the top of this form, it says "to be filled by the employer".

COMMISSIONER: I think that's right. He did say that. I am not sure about that, the second part.

MR ANDREWS: Certainly filled in by the employer and not by you?

COMMISSIONER: Yes.

MR ANDREWS: Thank you. And I have no further questions for Dr Sharma, but perhaps while he is there, I will tender a document from the Medical Board file. Would you put that on the screen, please? It seems to be a registration checklist of the 17th of February 2003 relating to Dr Sharma, concerning items checked with respect to an application for him to fill the position at the Fraser Coast Health Service District for SMO in orthopaedics from the period from the 11th of February 2003, and further down the page is the matter of significance - would you raise the document, please - that there was a box capable of being ticked for supervised setting required and it was not.

COMMISSIONER: All right, thank you.

MR ANDREWS: I tender that document.

COMMISSIONER: That will be Exhibit 363.

ADMITTED AND MARKED "EXHIBIT 363"

MR ANDREWS: May Dr Sharma be excused?

MR FARR: Whilst at the Bar table this morning, I have been handed a document that Mr Andrews has not seen that he may wish to show the witness, and he might want to see it is the scope of practice document we saw in relation to Dr Krishna. So I wonder whether you might consider just adjourning briefly while I give this to my friend.

COMMISSIONER: You would only want five minutes. I will sit here.

MR ANDREWS: I don't require an adjournment. May I have the scope of practice document put on the screen, please?

COMMISSIONER: Okay.

MR ANDREWS: Dr Sharma, you will see on the screen in a moment the Orthopaedic Surgical Services, Dr Sharma Scope of Service for Orthopaedic Trauma. And as I understand it, there is another one also that was created for orthopaedic surgery, is that the case?-- Yes.

That's a document prepared - is that a document you had seen while you were at the Fraser Coast?-- I think I have, yes.

Did you - do you understand it to specify the procedures that you were entitled to perform with and without supervision?-- Yes, that's correct.

Relating to orthopaedic trauma?-- That's correct.

And are there documents that show your scope of practice for orthopaedic trauma for January 2003 and January 2004 that you have supplied to Mr Farr?

MR FARR: I should indicate this wasn't supplied by Dr Sharma, it has just been discovered in the records overnight or this morning.

COMMISSIONER: In your records?

MR FARR: Yes, in Queensland Health's records. So he hasn't seen these documents in conference or anything prior.

COMMISSIONER: I see.

MR ANDREWS: Were you aware there was such a document relating to you?-- Yes.

COMMISSIONER: I thought he said he saw that.

MR ANDREWS: Yes. When did you see this document?-- I probably don't recall the exact time but I did see this document. I had also requested a copy of that.

Why did you wish for a copy of it?-- So that I can go through the list that has been made for me. I mean, it is no use having a scope of practice for somebody without a person having a copy of it.

I see. Do you recall in which year you asked for a copy of your scope of service?-- I am sorry, I don't.

Do you recall for approximately how long you had been at the hospital-----?-- No.

-----before a scope of service document was created for you?-- No.

Do you know for how long you had been at the hospital before you were supplied with a copy of your scope of service?-- No.

Did you have any discussions with Dr Naidoo about what should and should not be included in your scope of service?-- No, I

didn't.

After the scope of service was prepared, did you have any discussions with Dr Naidoo about what was in it?-- No.

Would you look, please, at the second page of that document, at the date at the bottom. I beg your pardon, is there a third page with a date on it? What - you will see that just above the date and place for Dr Naidoo's signature, there is a suggestion that you attended regular in-service and trauma update workshops arranged with the companies listed above. How many workshops did you attend with respect to those companies?-- Prior to coming here, I have attended three from Fiji originally, not necessarily with the same companies.

Well, my question is how many did you attend with respect to those companies which are appearing on that document?-- I think it is difficult for me to answer that question. The only thing I would like to say is these workshops were held in the hospital in the afternoons, usually, where any particular aspect of the topic will be discussed. I am not too sure how many was held at the hospital.

COMMISSIONER: You are not too sure how many you went to but was it one or two or more than that?-- Again, I would be guessing. I think there were about three or four of such talks held at the hospital.

Three or four, all right.

MR ANDREWS: Now, with respect to the contents of the document which sets out procedures that you could perform independently, do you agree that - well, is it your opinion that you were capable of performing those procedures independently?-- If I can-----

Yes, you are welcome to look at perhaps the first page and start there. Commissioner, I have about five of these documents. It may be convenient for you to adjourn for five minutes so that Dr Sharma may review them and consider this question.

COMMISSIONER: All right. Well, I will adjourn for my usual morning break, which will give you a bit longer than five minutes.

THE COMMISSION ADJOURNED AT 11.50 A.M.

THE COMMISSION RESUMED AT 12.06 P.M.

DINESH SHARMA, CONTINUING RE-EXAMINATION:

MR ANDREWS: Dr Sharma, during the break I gave you four documents to look at, two orthopaedic trauma documents, two elective orthopaedic surgery documents. One pair was dated 1 January '03, the other 1 January '04?-- Yes, I've got the documents, yes.

Have you considered whether the scope of service, as appears to have been prepared by Dr Morgan Naidoo, is the same as your own opinion of your capacity?-- No.

In what respects - have you marked the documents that you hold to show the respects in which you have a different opinion?-- I've quickly gone through it, so it may not be that correct, but a few of them, yes, I have marked. The other thing I want to comment is that one of the documents dated 1 January 2003 - I was employed from, I think, the beginning of March 2003, so-----

So the date seems to be inconsistent with your presence at the Fraser Coast?-- That's correct.

In fact there are two documents by my reckoning which are marked 1 January 2003?-- Yes.

One of them relates to orthopaedic trauma and the other to orthopaedic surgery?-- That's correct.

Well, can I start with the documents - with one of the documents of 1 January 2003? Perhaps the one relating to orthopaedic surgery. Is that convenient?-- Why don't we discuss 2004, because it would be probably more relevant.

Thank you. I'm content to do so?-- Thank you.

Which one are you looking at?-- The one with, "Orthopaedic Trauma".

Have you marked that document yet to indicate to a reader which procedures you hold a different opinion about?-- Yes.

Would it be convenient, doctor, if I had it put on the monitor so we can each see it?-- Yes, please.

This is the document headed "Orthopaedic Trauma", and as I understand it, it's dated 1 January 2004, and I see on the left-hand margin next to "ACJ dislocation" there seems to be a mark. Is that a mark made by you?-- That's correct.

Why have you indicated it?-- I would not perform this surgery independently because I have not done it before, and it's

usually done by shoulder surgeons.

It's usually done by a shoulder surgeon, did you say?-- Yes.

Then "fractured proximal humerus", you've marked it?-- Yes.

Why?-- A fractured proximal humerus can be quite complex. Various muscle attachments, fixation can be difficult. So I'd probably do it under supervision.

Now, have you any explanation for why Dr Naidoo or the author of this document would have formed the opinion that you could perform either of those independently?-- Unfortunately I can't answer that question because I don't think I performed the operation here in this country.

Is there anything else marked on that page? I can't be certain.

COMMISSIONER: No.

MR ANDREWS: Is there anything on the subsequent pages, doctor?-- I think there's some, but I'd just like to add, I mean, the things that are written are quite straightforward. It may be a bit difficult to say yes or no straight away to some of those things. Maybe depending upon the type of fracture or the type of the injury-----

COMMISSIONER: So some of those which are marked "perform independently" which you haven't marked, depending on the type of fracture, you accept that they're things that you should perform under supervision?-- I may ask for supervision, yes.

All right.

MR ANDREWS: Now, "acetabulum fracture simple". You've indicated something in the margin. Is that something you feel you should not perform independently?-- I would not do it in this country. But having said that, I have performed in Fiji.

COMMISSIONER: But it's something which, so far as you're concerned, you'd be happier if you performed with supervision?-- Yes.

MR ANDREWS: "Supracondylar intercondylar fracture simple". Is that something you should perform with supervision?-- Yes.

Was there anything else in that list? On the third page, distal tibial fracture complex", again something you should perform with supervision?

MR FARR: "Simple".

MR ANDREWS: "Simple"?-- I'd probably ask for assistance for even that type of injury.

And "compound tibial shaft fracture"?-- I think I could perform that unsupervised.

You think you could?-- Yes.

Was there any reason for putting a tick in the margin?-- Saying that-----

COMMISSIONER: Crosses are the ones you can't, and ticks are the ones you can?-- Yes.

MR ANDREWS: Are there any other marks?-- Can you go back to the other page, please? Down to the lower end of the page, please. Okay. When it comes to the severed tendon injuries, I'd prefer to refer them to a hand surgeon if they're available.

COMMISSIONER: Yes, all right. That's the last four?-- Yes.

MR ANDREWS: Commissioner, did you say the last four?

COMMISSIONER: I did. Isn't that right?-- Yes.

MR ANDREWS: Do you mind - I'd ask the operator to mark the last four with an asterix in the margin.

COMMISSIONER: You're happy with that? If we put an asterix in the margin of those last four?-- That's my preference, but whether I can perform unsupervised, I'll say yes, I can.

I see. Perhaps we just leave the evidence where it is and don't put the asterixes in. Do you want to tender that one?

MR ANDREWS: Is that the end of the comments that you'd like to make with respect to that document?-- Yes.

When it comes to the elective orthopaedic surgery documents, you have made a mark next to "rotator cuff tendonitis rupture simple". Does that indicate you feel you should be supervised?-- I would not perform it because I haven't done the particular procedure.

So you wouldn't perform it under supervision?-- No, unless I had been taken through it all.

You have a tick next to "recurrent anterior dislocation shoulder". What does that indicate?-- That means that I can perform it, but again, not in this country because shoulder surgeons do it.

Thank you. "Wrist arthropathy"?-- I don't think I'd do an arthrodesis of the wrist on my own.

"Subtalar osteoarthritis arthropathy"?-- Arthrodesis, I'd not do that on my own.

"Loose bodies"?-- Most of the time we can do that without supervision.

I see. So that's something you feel you ought to have been permitted to do.

COMMISSIONER: Most of the time?-- Yes.

Depending on the operation?-- Depending on - loose bodies in the joints sometimes can be quite complex because they hide in certain places. If you can't get it, then I do ask for help. But most of the time, yes, I do.

Thank you.

MR ANDREWS: Are they the only comments you have to make about those scope of practice documents?-- Yes. At the moment, yes.

I have nothing further.

COMMISSIONER: Are you going to tender them?

MR ANDREWS: I tender those documents.

COMMISSIONER: What about the 2003 ones?

CLERK: There are marks on those ones, yes.

WITNESS: I was going through them, but then I saw the date when I was not here, so I thought it's not relevant.

COMMISSIONER: Well, would the same comments apply to the 2003 ones?-- Yes.

All right. The 2004 documents - I'll give those one exhibit number. Is that appropriate?

MR ANDREWS: Yes, Commissioner.

COMMISSIONER: They will be Exhibit 364.

ADMITTED AND MARKED "EXHIBIT 364"

MR ANDREWS: Is that the four of them, Commissioner?

COMMISSIONER: No, it's only two, the two 2004 ones.

MR ANDREWS: I see.

COMMISSIONER: His comments were that so far as 2003 is concerned, he'd put the same marks on it.

MR ANDREWS: I propose to tender the 2003 documents. They may be documents I should put also to Dr Naidoo.

COMMISSIONER: Very well. I'll make those Exhibit 365.

ADMITTED AND MARKED "EXHIBIT 365"

MR ANDREWS: Thank you, Commissioner. I've no further questions for Dr Sharma.

COMMISSIONER: You want him to be excused?

MR ANDREWS: Yes, unless there's some re-examination arising out of that-----

COMMISSIONER: Who wants to ask questions arising out of that?

MR DEVLIN: I had three questions arising, Commissioner, if I may.

COMMISSIONER: All right.

FURTHER CROSS-EXAMINATION:

MR DEVLIN: Firstly, do we take it you did not consult with Dr Naidoo over the make-up of this list?-- No.

Secondly, you cannot say with any accuracy the time at which during your time at Hervey Bay you got access to this document?-- No.

Thirdly, do you believe you've performed any of the operations that required supervision according to the list without supervision?-- I can't remember any particular cases at the moment.

Thank you.

COMMISSIONER: Did you have any questions out of that, Mr Farr?

MR FARR: No, I don't, thank you, Commissioner.

COMMISSIONER: You'd like Dr Sharma to be excused?

MR ANDREWS: Yes, please, Commissioner.

COMMISSIONER: No-one has any objection to that? Thank you, doctor. You're excused from further attendance.

WITNESS EXCUSED

COMMISSIONER: You don't have any further witnesses.

MR ANDREWS: No, Commissioner, but I can advise the parties who to expect in coming days?

COMMISSIONER: Yes.

MR ANDREWS: Tomorrow Professor Stable is the only witness to be called.

COMMISSIONER: Yes.

MR ANDREWS: On Friday Dr Mullen is being recalled for cross-examination. There are no other witnesses scheduled. On Monday a witness whose surname is Collins is being called, a Queensland Health employee, on the topic, I think, of measured quality. Dr Mattiussi is being recalled on Monday for cross-examination, and for Tuesday of next week the only witness to date is Dr Jayasekera.

COMMISSIONER: We might have other witnesses scheduled in on some of those days.

MR ANDREWS: I do hope to be able to find other witnesses, yes.

COMMISSIONER: It's not that we don't have other witnesses.

MR ANDREWS: No.

COMMISSIONER: All right. We'll adjourn until-----

MR MULLINS: Excuse me, Commissioner, can I be bold enough to ask when the Commission would be expecting submissions?

COMMISSIONER: Yes, certainly, you can be bold enough to ask. I can tell you generally what I had in mind. The evidence, I'm told by Mr Andrews, is unlikely to finish before the end of the week after next. I had in mind indicating to all the parties that I wanted submissions in writing within seven days of that, perhaps even five days of that, but some time perhaps in the following week, and I propose to give that indication probably some time next week.

While I'm mentioning that, there is another matter which I'll foreshadow now, and perhaps I'll make a more specific order in this respect tomorrow, and that is if any counsel want to make any submissions about the recalling of further witnesses, based only on the perceived bias by Mr Morris, then I'd like submissions in writing from them on that point, and I'd like them by 10 a.m. next Wednesday. I'll make a specific order about that in more specific terms tomorrow, but that's really my general timeframe.

I then propose, having ruled on those submissions, to give some indication as to when I'll give notice of findings that might be made against any persons, and then I will give a direction about addresses.

I have in mind at the moment that submissions will be given to me in writing, not limited in extent, although, of course, I accept counsel will be concise, without the need for amplification by oral submissions. That's at least partly because of the timeframe that we have, which is quite restrictive.

Has anyone else got any queries about the further conduct of the Inquiry while we're on this point?

MR MULLINS: Given the unusual circumstances of the first 50 days were not presided over by yourself, do you require specific notice of any aspects of the evidence that a party may wish you to view in the video format?

COMMISSIONER: Any party should-----

MR MULLINS: For example, if we have an issue of the conflict of evidence and that a party submits that conflict should be resolved and the parties - do you require notice that a particular party wishes you to watch the video evidence of particular evidence? For example, I'm not sure whether this video evidence is actually available to the Commission of Inquiry.

COMMISSIONER: We probably need to know that. Yes, I would need notice of that, but that would be sufficient to do that in the submissions at the end of the hearing. I'd be happy if you gave them then. If you want to give me notice before then, then I'm grateful for any help you can give me.

MR MULLINS: I'm mindful that at the bias application a subpoena was issued in the first instance to actually secure that material from whatever the relevant television station was so that it could be produced to the Supreme Court. I'm not sure whether the same sort of order will be required in the Inquiry.

COMMISSIONER: Well, if it is and someone wants me to look at that evidence, then I'll make that order.

MR MULLINS: Thank you.

COMMISSIONER: Yes?

MR DEVLIN: I have a question about the Orders in Council, Commissioner. There was some discussion as a result of the Medical Board's letter about a change. Do you anticipate when that change will happen?

COMMISSIONER: No, I don't. I don't have any perception about it. I have in fact written to the Premier indicating some amendments that I wanted made to the Terms of Reference, which included that, and I've had no reply to that letter yet.

MR DEVLIN: Thank you.

COMMISSIONER: But I think you can assume that that will be included, and I think you should direct your attention when you're preparing submissions - I suppose you'll start doing very soon - assume that that will be included. All right? Adjourn until 10 a.m. tomorrow.

THE COMMISSION ADJOURNED AT 12.25 P.M. TILL 10 A.M. THE FOLLOWING DAY