Transcript of Proceedings

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THE HONOURABLE G DAVIES AO, Commissioner

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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 27/09/2005

..DAY 12

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THE COMMISSION RESUMED AT 10.02 A.M.

COMMISSIONER: Can I mention two matters at the outset. The first is that I received this morning a letter from the Premier dated 26 September, which I will make public and mark as an exhibit, and it will be Exhibit number 380.

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ADMITTED AND MARKED "EXHIBIT 380"

COMMISSIONER: The second matter relates to addresses, and this is just another reminder to counsel. I did mention last week that I had intended to ask for submissions in writing. That is still my present intention and what I propose to do is to make a direction, probably some time next week, that submissions in writing be submitted to the Commission within seven days of the close of oral evidence.

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I am giving this reminder at this stage because I don't want someone saying to me when I give that direction, "You are giving us only seven days?" In fact, it will be about a month from now or certainly a month from last week when I gave the first reminder.

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The other matter I should mention is if anyone wants to make any submissions about any person's - intention that any person has not been accorded procedural fairness by this Commission, then it will obviously be appropriate that you make those submissions before the close of oral evidence so that if that alleged lack of procedural fairness can be cured by the according of further evidence, that can be done conveniently.

So again I would like any such submission to be in writing and to be in writing to me before the close of evidence.

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Yes, Mr Andrews?

MR DEVLIN: Commissioner, may I just ask one question about what you have said?

COMMISSIONER: Yes, certainly.

MR DEVLIN: During the discussion last week, I think it was, you mentioned an intent, having a present intention to give notice to parties who might - with respect to whom you contemplate making adverse finding.

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COMMISSIONER: Adverse recommendations, anyway.

MR DEVLIN: Yes, adverse recommendations.

COMMISSIONER: Yes.

MR DEVLIN: When do you see the timing of that fitting----- 1

COMMISSIONER: That's started actually.

MR DEVLIN: Right.

COMMISSIONER: It will continue during the course of this week. I would hope that all notices will be out by the end of next - end of this week, but in some cases it will have to await the evidence of those witnesses. 10

MR DEVLIN: Yes.

COMMISSIONER: So I can't give them notice before I have heard the witness.

MR DEVLIN: No, indeed. Thank you.

MR FREEBURN: Commissioner, can I seek leave to appear for Mr Leck? 20

COMMISSIONER: Yes:

MR FREEBURN: In place of Mr Ashton-----

COMMISSIONER: Certainly.

MR FREEBURN: -----temporarily.

COMMISSIONER: Yes. Yes, Mr Andrews? 30

MR ANDREWS: Commissioner, before calling the first witness, I apprehend that a number of the parties will be anticipating from the website that tomorrow after Mr Collins is called that Dr Krishna would be called and Mr Hanelt or Dr Hanelt to follow.

COMMISSIONER: Yes.

MR ANDREWS: Due to some further evidence to hand relating to matters at the Fraser Coast, it becomes necessary to postpone the calling of both Dr Krishna and Mr Hanelt. The ambition is that another orthopaedic specialist who will be commenting on some procedures that were performed at the Fraser Coast would first be called and that records relating to - I think about five patients would be distributed and that after that Dr Krishna and Mr Hanelt will be called. 40

COMMISSIONER: It's not intended to call that specialist tomorrow? 50

MR ANDREWS: No.

I call-----

COMMISSIONER: Excuse me, do we have any witnesses for tomorrow then?

MR ANDREWS: No, but in - when this has happened before, the Inquiry's turned to Queensland Health and said, "Who have you got?", and they have generally been able to supply someone. It is just that at this stage-----

COMMISSIONER: We don't want fill in with anyone, mind you.

MR ANDREWS: At this stage, I think Commissioner, we're running short of witnesses to supply, although I do know that Queensland Health has supplied us with a number of statements some weeks ago that were supplied for the last Inquiry and some of them may be witnesses Queensland Health want examined in this Inquiry.

COMMISSIONER: Right.

MR ANDREWS: So I'm optimistic-----

COMMISSIONER: Let's hope.

MR ANDREWS: -----someone may be supplied.

COMMISSIONER: All right. Thank you.

MR ANDREWS: I call - recall Dr Jayasekera.

MS GALLAGHER: We sought leave previously to appear for Dr Jayasekera and I seek leave in this Inquiry also in the continuation of evidence.

COMMISSIONER: Yes, Ms Gallagher.

LAKSHMAN KUMAR JAYASEKERA, RECALLED:

FURTHER EXAMINATION:

MR ANDREWS: Good morning, doctor?-- Morning.

My name is Andrews. We have spoken on the telephone-----?-- Telephone.

-----once and you have given some evidence by telephone a couple of weeks ago. Do you recall that?-- I do, but probably it wasn't clear and nothing could be heard, if I am correct.

Doctor, would you look, please, at this statement which I will put on the monitor. You will see that before you there is a screen in the witness box. Do you see it?-- Noted. The screen is here, but nothing's come up on it.

Is that a statement that you have signed this morning?-- Yes.

1

Are the matters in it true and correct? Is the statement true?-- It is true.

I tender it, Commissioner.

COMMISSIONER: Yes. That will be Exhibit 381.

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ADMITTED AND MARKED "EXHIBIT 381"

MR ANDREWS: Doctor, do you have a copy of your earlier statement, which is Exhibit 308, your statement sworn on the 27th of May 2005?-- I have it in front of me.

Thank you. In that statement, you at paragraph 24 say that you asked Dr Nydam whether you were supposed to supervise Dr Anatoli, the Russian doctor, who was employed at the hospital. Do you recall that?-- Yes.

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Was Dr Nydam at the time the Acting Director of Medical Services?-- Yes.

Now, as I see from your statement, Dr Nydam said that Dr Anatoli needed no supervision-----?-- That's right.

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-----because he was an experienced surgeon?-- Surgeon.

Do you recall whether Dr Anatoli underwent a credentialing and privileging process?-- No. I have heard - I had heard about Dr Anatoli and I knew that he had not worked in Australia, even at the registrar level, and was what's called a PHO, Principal House Officer in hospitals. So I was surprised why a doctor like that was sent to Bundaberg to work as a consultant. That's the reason why I went and asked Dr Nydam whether he is proficient.

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At paragraph 26 you recall an occasion when a theatre nurse asked you to come in because there was a patient who was going to die on the table. Do you recall the name of the patient?-- No, I don't recall the name of the patient.

The patient was being operated on by Dr Anatoli. Is that the case?-- That's right.

Were you on call?-- I wasn't on call, I was having my dinner or supper, whatever you call it.

50

It would be usual for a person who was rostered on call to be the first person telephoned by a theatre nurse, wouldn't it?-- That's right, yes.

Do you remember whether there was anybody on call?-- There was no-one because there were two surgeons at that time and

Sam Baker was one of the surgeons, but he's gone - he had gone on leave, for two months leave, so Dr Anatoli came in his place. So I was the only other surgeon available there. 1

Do you know whether Dr Anatoli came as a short-term locum or whether his position was intended to be more permanent?-- He came as a locum but he was trying to get a sort of permanent position there.

You completed the operation that had been commenced by Dr Anatoli. You did a bowel resection?-- That's right. 10

And the patient recovered. You were asked by Dr Nydam if you'd supervise Dr Anatoli's work after that time?-- That's because I went and told Dr Nydam this happened, this sort of thing happened, what he want me to do, are we going to continue like this, and then he asked whether I could supervise him.

Did you impose a condition?-- Yes. 20

What was that?-- I said I want to know each and every patient, about each and every patient he takes to theatre before he operates on patients.

All right. Now, asking to know each and every patient, I assume you wanted to know what procedure was proposed for each and every patient?-- That's why that procedure was necessary, why is he doing the procedure, is that the correct operation for that or does he need an operation. So there are a lot of things to consider in a patient like that. 30

That is the normal information - you tell me, is that the normal information that would be conveyed to a supervising specialist surgeon?-- No patient goes to theatre without being informed - without informing the consultant. No-one takes patients to theatre without informing the consultant.

That information might be given to the consultant even if the consultant is away from the hospital?-- Yes. Sometimes we supervised from home but that doesn't mean that we are not there if something happened and we have to come in, complete the job. 40

A few days after you'd been asked to supervise Dr Anatoli, there was another operation that Dr Anatoli was performing and you say that he did the opposite to what you told him to do. Can you recall what you told him to do?-- Well, this was a patient who had what's called adhesions from previous operations. Sometimes bowel bits get stuck to each other, and what we do, we open and just divide those bands or whatever, just relieve the obstruction. He had the patient in theatre. He called me and said, "I am going to do this operation.", and I said, "Right. Open up and call me." He opened up and called me and I said, "That band, just divide where that band"----- 50

Just what the band?-- Divide the band.

Did you say "just divide the band"?-- "Divide the band". This is a life-saving operation, normal operation. When he is opening, "Just divide the band", and that's it. Then he asked whether he could do some complex procedure called stricturoplasty, which is done mainly for Crohn's Disease, that's a chronic inflammatory condition of the bowel where you get long segments of narrowing to bypass to do that, but we don't do that for ordinary bowel resections, bowel adhesions. So I told him, "No, don't do that. Just divide the band and send him back to the ward."

And what did Dr Anatoli do?-- Two days after this patient developed a leak into the abdominal cavity. All bowel contents were inside, and I heard from the ICU that the patient was transferred to Gold Coast Hospital, and I called him and asked, "Why? What did you do?" He did do stricturoplasty-----

I think the witness said, "He told me he did some stricturoplasty"?-- Stricture-----

Plasty? Stricture?-- "Stricture" is narrowing, "plasty" is to correct narrowing.

Thank you, doctor. And that's precisely what you have told him not to do?-- Yes.

Do you know the name of that patient?-- No, I'm sorry.

You went to Dr Nydam, I see, as a result of this?-- And I went and told him he has done this and, "I am got going to supervise him hereafter. I can't take the responsibility."

How long after?-- Immediately, next day.

And how long after you have told Dr Nydam of this did the Russian doctor leave the hospital?-- Well, after that he wanted to do certain cases and anaesthetics wouldn't anaesthetise for him. They said, "No, we are not going to anaesthetise unless - and we can't" - they said, "We have transferred the patient. We aren't going to anaesthetise for him", so then he left, maybe after a week or two weeks.

Now, did you ever perform duties as an Acting Director of Surgery?-- Yes, after Sam Baker left I was the Acting Director.

Does that mean - for how long did you fill the position of Acting Director of Surgery?-- Well, it's not an official sort of appointment. I mean, I automatically became the Acting Director when he left because I was performing his duties. I can answer that question. He was away for two months on leave and he left for good.

You say at paragraph 34 of your statement that there was a Staff Advisory Committee meeting where a motion was put to management, Dr Nydam and Peter Leck, requesting to be informed

why the position of Director of Surgery had not been offered to you. Were you at that meeting?-- I was at the meeting.

Staff Advisory Committee meetings, how often were they held?-- I think it's either once a month or once in three months, I can't remember exactly.

The purpose of these questions is to try to identify the date of the meeting that you attended. Do you remember that, when that meeting was?-- No, I'm sorry.

Now, prior to your departure from the hospital, did you give a period of notice that you were departing?-- I give three months of notice.

And do you recall whether you gave your notice before or after the end of December 2002?-- I left on the 31st of March. That would have been towards the end of December.

End of?-- It has to be the end of December, because I gave three months from-----

Yes. Thank you. About the 28th of December 2002 was the recollection of Dr Nydam as the time when you resigned?-- That's not the time I resigned, that's the time I informed them that I would be resigning in three months.

Thank you. Would you look, please, at paragraph 34 and recall for me what Dr Nydam and Mr Leck did when the motion was put at the meeting?-- Well, this question was raised by Dr Peter Anderson and they wouldn't answer. There was no answer from anyone.

Do you mean they sat silent?-- Yes.

I have no further questions, Commissioner.

COMMISSIONER: Thank you. You have agreed upon an order today?

MR MULLINS: We have, Commissioner.

COMMISSIONER: Good.

MR MULLINS: I am first.

COMMISSIONER: Good.

CROSS-EXAMINATION: 1

MR MULLINS: Dr Jayasekera, can I just clarify with you your qualifications. I am looking - sorry, my name is Mullins. I appear on behalf of the patients. I am looking at paragraph 7 of your statement. I should say paragraph 6. You say you passed your FRACS exams in 2000; that's correct?-- That's correct. 10

Paragraph 7, you were able to complete your fellowship in a period of two years; that's correct?-- That's correct.

Were you then a member of the college?-- Yes. You have to be a member of the college before you sit the exam.

Right. So, you are as at 2002 a fully qualified specialist surgeon; is that correct?-- In Australia?

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Yes?-- Yes.

And registered as such?-- Yes.

No restriction on your-----?-- No restriction, no.

-----practice? Full access to the college facilities and training program?-- Yes, yes.

No restriction upon your access to other members of the college?-- No. 30

You have contacts with other members of the college on a regular basis?-- Yes.

There was no restriction or your ability to practice as a surgeon whatsoever?-- Practice, no.

Well, now, you were available to be the Director of Surgery at Bundaberg-----?-- Yes. 40

-----in early 2003; that's correct?-- Yes.

Do you understand the process of credentialing and privileging?-- Yes.

Were you aware that there was a process promulgated by Queensland Health that required a surgeon to first be or a medical practitioner to first be credentialed?-- Credentialed. 50

Yes. What did you understand that to be?-- That's - well, you can do operations which have been recognised by the college and you are competent with. So, they give you - well, you can do general surgery or neurotology, whatever, you can perform what you have learnt.

Right. And the privileging process permits you to do certain

surgery at a hospital?-- Yes.

That's correct. Had you ever been yourself involved on a committee of credentialing and privileging?-- No.

Had you ever been asked whether you would participate in a committee to credential and privilege either another surgeon or a Senior Medical Officer?-- No.

Had anybody at the Bundaberg Hospital in the 12 months that you were there asked you whether you would be prepared to participate?-- No.

Did anybody ever ask you whether you were a member of the college?-- Sorry?

Did anybody ever ask you whether you were a member of the College of Surgeons?-- Everybody knew that. Everybody knew that. I am sure everybody knew that.

You mentioned during the course of your statement that you were on a number of committees at the hospital?-- Yeah, they have various committees, like that advisory committee, and I can't remember the names of the committees because I am not involved in those committees.

Sorry. Did Mr Leck ever approach you and say, "I want to start up a credentialing and privileging committee. Will you be on that?"?-- No, I don't remember anything like that happening.

Can I take you to paragraph 32 of your statement. Just before I do, one more point about the credentialing and privileging I omitted to ask you. Did Mr Leck ever approach you and ask you whether you could assist in credentialing and privileging the Russian surgeon, Dr Anatoli?-- No, no. No. That question didn't arise. I mean, no-one asked me about it.

Now, paragraph 32. This seems to be in the latter half of 2002, the position of the Director of Surgery becomes vacant again?-- Yes.

At that point in time we have you employed as a surgeon?-- That's correct?-- Yes, yes.

You are being paid at an M point - sorry, MO1.7 level?-- Seven, yes.

Now, that is the pay level of a - closest to a senior consultant surgeon?-- That's the highest - highest level in that trade, type grade.

Yes. How far from that is the Senior Medical Officer pay rate? Is it significantly less for a Senior Medical Officer?-- We all are Senior Medical Officers, all consultants, but when you say Senior Medical Officer, you refer to a person who is not a consultant? Is that what you're trying to-----

A person without specialist's qualifications?-- Yes.

Are they at a significantly lower pay rate than you would be at?-- Maybe about 10,000 or something less.

10,000 per annum?-- Per annum, yes.

In any case, you're being paid at the - I can show you this document just so you can clarify. In fact, put it on the overhead. If you would just show the top of the document first. Have you ever seen that document before, or something like it?-- This is only the RMO and Registrar, two registrar, four.

Well, the heading says the District Health Services Medical Officer-----?-- But I see only the top part of the paper.

We will move it down in a second but you have seen a document like this before?-- Yes, yes.

We will move it down further and we can see there at 5.2.7 we have the staff specialists and MO1-7 at 119,582 per annum in 2003. Was that the level that you would have been on?-- Yes, MO1-7. So this must be - is it option A or - the last column?

Can you go back to the top of the page. Are you saying there are two options that you can adopt?-- A and B. Per annum. All right. No, it's clear. It's clear now. That's per fortnight and one per annum.

All right. Can I just go to the next page. Would your pay have increased to M02 level had you been appointed Director of Surgery?-- No, no, that's a different process altogether.

All right. Thank you. In any case, in the latter half of 2002 you're an M-----?-- M01-7.

MO1.7. You're college qualified and accredited; that's correct?-- Yes. 1

You've got access to all the college facilities; that's correct?-- Correct, yes.

Yes. And you're available for the position of the Director of Surgery?-- Director of Surgery, yes.

You then were approached by Dr Nydam, who asked you to apply for the position-----?-- That's right. 10

-----of Director of Surgery. What was the process? Did you have to complete a form?-- I did. When this - when this vacancy was advertised I was not interested at all, I didn't apply for that post so Dr Nydam approached me twice. Once he asked, "Aren't you going to apply for the job?" I said, "No. I'm not interested." He came back again and he said, "I want you to apply for this job." So I didn't have a reason so I thought there must be some reasons. I said, "All right then, I'll apply." It's not easy to apply for a job because you had to sort of answer all this selection criteria. It takes a few days. And I did all that and I applied for the job and there was an interview and two of us came to the interview. 20

When you say there were two of you came for the interview?-- One had a I think a telephone interview. I had sort of face-to-face interview.

Right. Now, who was on the selection committee for your interview?-- Oh, Dr Anderson, Peter Leck and Kees Nydam, Dr Nydam. 30

Dr Anderson, Peter Leck?-- Peter Leck.

And Dr Nydam; that's correct?-- Mmm-hmm.

Just when you say "mmm-hmm"?-- Sorry.

We are being recorded you see?-- Yes, yes. 40

So you don't have to say yes, but if you give an answer, it will be recorded. Now, Dr Nydam had invited you for the job; that's correct?-- Yes.

And you've already told Mr Andrews that Dr Anderson asked the committee meeting some time later why the job wasn't offered to you; that's correct?-- Because Anderson, Dr Anderson probably knew what was happening because he was on the board, he was on the board, that's why he asked, because the other person declined to come, he refused to come. Then Dr Anderson said if he didn't come, that should have been offered to me. That's why he asked especially why wasn't it offered to so and so. 50

In any case, there were three people on the selection committee and the job was offered to the person from Yugoslavia?-- That's right.

That person then didn't attend as we know?-- He didn't - no, he didn't accept the job.

And you've told us that at a subsequent staff advisory committee, Dr Anderson put the motion why it was that you hadn't been offered the job after that time?-- That's right, yes.

Have you ever received a response to that question?-- No, no, but I remember Dr Nydam approached me after the interview, he said, "I'm sorry I didn't give you the job", and he had two reasons for that. One was because I was not interested in that job, he didn't give it to me, and number 2 was he explained - he said, "If I gave you the job, then they have another vacancy, then we had to re-advertise to fill my vacancy. That's going to cost a lot of money." So that's why he gave me - gave that job, the director job, to the other - the other doctor, so he didn't have to do that again.

Now, you commence at Hervey Bay then on 31 March 2003?-- That's right, yes.

Yes. I should ask you this question: why weren't you interested in the job in the first instance?-- Why weren't I?

Why were you not interested in the Director of Surgery position in the first instance?-- I like to keep a low profile. I don't want to get involved in politics and I can't lie and do all this. I can't punish people and, you know.

When you ultimately, though, applied you were keen to work as a Director of Surgery?-- Mainly because of pressure from my friends. They said better accept that job because if there was a junior guy, junior doctor, it is embarrassing to work - being a surgeon, to work under a junior doctor. So that was the argument a lot of my friends had.

In any case, you gave notice that you were leaving Bundaberg in December 2002?-- Yes.

And you left on 31 March 2003?-- That's right, yes.

And that's when you commenced at Hervey Bay?-- Hervey Bay.

How far is Hervey Bay from Bundaberg?-- A difference about 85 kilometres.

Now, after you arrived at Hervey Bay, you were still a member of the college?-- Yes.

You still had your college contacts?-- Yes, without being a member of the college, I don't think anyone can practice.

How long did you stay at Hervey Bay for?-- Maybe from March till December. December 8 I left.

Did you ultimately leave Bundaberg on good terms with

Mr Leck?-- Well, they were very nice the day I left, not before that.

Were you happy - sorry, were you on good terms with Dr Nydam?-- Yes, yes.

Did anybody contact you in your nine months at Hervey Bay and ask you to be part of a credentialing and privileging committee for the new surgeons or the new medical staff at Bundaberg Hospital?-- I don't remember anyone asking me that question.

COMMISSIONER: If you had been asked, you would remember. If you had been asked, you would remember it, wouldn't you?-- Yeah, but I don't think I have been asked by anyone.

MR MULLINS: Had you been asked as to whether you'd come to assist in credentialing and privileging the new surgeon, you would have been prepared to do that, wouldn't you?-- Definitely, yes.

Nothing further, thank you.

COMMISSIONER: Thank you. Mr Allen.

MR ALLEN: Thank you, Commissioner.

CROSS-EXAMINATION:

MR ALLEN: Doctor, John Allen for the Queensland Nurses Union. You were a staff surgeon at Bundaberg Base Hospital for something like 14 months?-- From 14 January till about the 31st of March, yes. Fourteen, 15 months, yes.

Were you undertaking general surgery during that period of time?-- I used to do general surgery and general urology or plastic surgery. There weren't very many specialists in various fields so it was mainly general surgery plus anything I could manage there.

Okay. During that period of time Dr Sam Baker was the Director of Surgery?-- That's right.

And the former Director of Surgery Dr Peter Anderson was a visiting medical officer?-- He was, yes.

Firstly, in relation to yourself, were there any particular procedures which you were not prepared to undertake at Bundaberg Base Hospital because of their complexity?-- I - I always ask the patients, I tell them, "I can do this operation here but there are specialised centres in Brisbane. They do these things every day so you will be better off if you go to Brisbane",and if they say yes, I transfer them there.

Did you have any understanding of the limitations placed upon the nature of surgery at Bundaberg Base Hospital because of the fact that it was a level 1 Intensive Care Unit?-- This is the reason why we transferred most of the patients. I mean, I have done gastrectomies and things like that but I was quite sure that - certain that it could be done there and they were not really complicated cases but I wanted to - an operation called Whipple's or something, not that I have done it before in a place like Bundaberg, because patients get a better deal if you transfer the patient to PA Hospital and I talk to them and talk to them and said, "We have a patient like this, would you like to take the patient?"

You've anticipated my next question. During the time you were a surgeon at Bundaberg did you ever undertake a Whipple's procedure?-- No, I didn't. I didn't.

And why not?-- I wouldn't have. I wouldn't have. I've explained that. I tell the patient, "Right, I can do it here but the facilities may not be there or - to look after you and the best place for you is Brisbane", where they have a hepatobiliary centre, liver centre, and they will definitely do a better job there.

So you had a firm view that it would be in the patient's best-----?-- Interests.

-----interests that they not undergo a Whipple's procedure in Bundaberg?-- Yes.

Did you ever perform oesophagectomies?-- I didn't.

Why not?-- It is the same reason. It is the same reason. I have done these procedures before, but Bundaberg Hospital, I - I wouldn't have done any.

Were you aware at any time during the period that you were at Bundaberg of oesophagectomies or Whipple's procedures being undertaken by other surgeons at that hospital?-- I'm not aware of anyone doing those procedures at Bundaberg Base Hospital during my time. I know Dr Nankivell is a very good surgeon but I don't think he ever did these operations.

For the same reason?-- The same reason.

Being the interests of the patient?-- Yes.

Did you understand that there would be any prohibition on you undertaking those procedures? For instance, that you would be breaching any policy or direction of management if you were to undertake such procedures?-- I'm not aware of any policy like that. I haven't heard of any policies like that. I mean, if I think I can do the case and if we have the facilities, then I might consider doing that, if I - if I'm sure of what I'm doing.

All right. So as you understand it, it was left to the judgment of the surgeon?-- Yes.

Thank you.

COMMISSIONER: Yes.

MR DEVLIN: Thank you, Commissioner.

CROSS-EXAMINATION:

MR DEVLIN: Ralph Devlin, representing the Medical Board, Doctor. The Russian doctor was discussed before the Commission with Dr Nydam. I just want to put a few things to you to see if they jog your memory. Firstly, do you recall that the Russian doctor was a locum for three or four weeks in place of Dr Sam Baker, who had gone overseas to do some study? Does that ring any bells with you?-- Yeah, I think he was sent for two months if I am correct.

Thank you. That Dr Nydam, once concerns arose, asked you to exercise your supervision over him which you reluctantly did; do you accept or reject that suggestion?-- He asked me after I informed of what happened.

Yes, and were you somewhat reluctant. And I don't imply a criticism there, I'm just asking you?-- I know.

Were you somewhat reluctant to exercise that supervision and, if so, why?-- A little bit reluctant because I didn't know - if the registrar has worked under me, then I know the capabilities of that doctor, but here is a doctor I have never seen. I have heard only bad things about the doctor.

You had heard bad things?-- Of course, yes.

Just by the staff?-- By other doctors where he had worked.

Where he had worked?-- Yes.

Did you, for example, know that his background was in obstetrics and gynaecology?-- No, I think his background was in paediatrics. He claimed to be a paediatric surgeon.

I see. Do you know whether his name was Anatoli Pavlov?-- I remember his first name but I can't-----

Do you recall his first name being Anatoli?-- Anatoli, yes. I think he is not Pavlov. It is Kotlov.

I see. So, did this doctor come to Bundaberg from Brisbane or from Townsville, do you know?-- I - I'm not sure because when this happened I had to contact the Director of Surgery at Bundaberg Hospital so that's - that means he probably came from - not Bundaberg, at Royal Brisbane Hospital, Dr Barry O'Loughlin. That means he came - he probably came from Royal

Brisbane Hospital.

Right. Commissioner, could I ask that you make a non-publication order about the name Anatoli Pavlov. The board has been trying to identify this practitioner about which some criticism has been made to produce the practitioner's file to the Commission for its assistance.

COMMISSIONER: Yes.

MR DEVLIN: However, I'm not sure we have got the right man at all. I have a file here but the description being given is correct as to the first name of the doctor but every other particular doesn't fit.

COMMISSIONER: And Dr Anatoli was at Bundaberg?

MR DEVLIN: There is no record of that here.

COMMISSIONER: Oh, I see.

MR DEVLIN: But a Dr Anatoli in Townsville still exists and it could bring a great unfairness to him if his name was published.

COMMISSIONER: All right. I make that order.

MR DEVLIN: Thank you. We will continue to try to identify who that practitioner is.

COMMISSIONER: Thank you.

MR DEVLIN: Can I ask you about this matter. Dr Nydam gave evidence, and for your assistance, Commissioner, page 4181 of the transcript, that a Director of Surgery in Brisbane he contacted told him that the Russian doctor had to be supervised. Okay, are you with me so far?-- Yes.

Accepting for the moment that that be so, when you first worked with him, did you not have that understanding, that supervision of this particular overseas practitioner was required?-- This is one-----

Sorry, can I make myself clear. Was it only when the difficulties arose that the matter of supervision was raised?-- No. I heard about this - this doctor and when he came to hospital I went to Dr Nydam and asked does he need supervision.

Yes?-- And he said, "No, no, he's a very, very"-----

Experienced?-- -----"experienced surgeon. He doesn't need supervision."

But that position changed as-----?-- Changed when that happened.

When observations of his skills were made?-- Yeah.

And concerns raised?-- No, especially after that incident where I was called to help him with that patient who was on the table.

Now, that's the bowel resection?-- Bowel resection, yes.

And you cannot - try as you might, you can't help us identify the particular procedure or the patient and, again, I'm not being critical, you just cannot now tell us who that patient was?-- The name of the patient I can't remember but I remember the operation he did.

Yes. Thank you. See if this jogs any memory or whether you find yourself at odds with this description by Dr Nydam, and it is only really just trying to clarify things if we can. Dr Nydam recalled that there was a weekend where you took some leave in Brisbane and Dr Thiele and Dr Carter between them agreed to cover the Russian doctor by way of supervision for that weekend. Does that ring any bells with you?-- I - yeah, there was something like that but I am sure the anaesthetist refused to anaesthetise for him, though they agreed something like that happened.

So did the Russian doctor play out the entire period of the locum at Bundaberg or did he suddenly and unexpectedly depart?-- He left, he left, after some time.

And you don't know where he departed to?-- He didn't work for some time. He didn't work for some time but now I hear he's at Royal Brisbane Hospital working as a junior doctor.

Very well. And so far as Bundaberg was concerned then, it seems that somebody took some step to have him go to a more larger hospital perhaps.

COMMISSIONER: No, he didn't work for a while.

MR DEVLIN: I'm sorry, yes, thank you, Commissioner. So somebody took some step that cut short the period he was to be there, or don't you know?-- I think he decided on his own, he decided to go because the anaesthetist wouldn't anaesthetise for him so he thought there was no point hanging around there.

MR DIEHM: Thank you, Commissioner.

CROSS-EXAMINATION:

MR DIEHM: Doctor, my name is Diehm and I appear for Dr Keating. I just have a couple of questions for you. Firstly, when you arrived at Hervey Bay or after you arrived at Hervey Bay Hospital and for the time that you worked there, were you subjected to a credentialing and privileging process at that hospital?-- No, what happened was he said, "You have

that for three years", so they didn't have to do it again. It was-----

So this was a - some privileges that had been granted to you at Bundaberg?-- Granted at Bundaberg, he said that can go on for three weeks.

Thank you. You say in your statement that you commenced at Hervey Bay Hospital, and this is my understanding of it, on the 31st of March 2003?-- March, yes, yes.

When did you last work at Bundaberg?-- A few days before that.

A few days before. In the weeks leading up to when you ceased at Bundaberg, were you aware of a surgeon by the name of Dr Feint working at Bundaberg Hospital?-- Yes, yes.

Were you aware of Dr Feint performing an oesophagectomy on a patient at Bundaberg Hospital in March of 2003?-- I don't know. I can't remember.

All right. Now, in the time that you worked at Bundaberg Hospital, did you ever have occasion to place Tenckhoff catheters in dialysis patients?-- I think I did all the - all the Tenckhoff myself for Dr Miach.

Do you recall how many you did, approximately I'm sorry?-- Thirty, 40.

Thirty or 40?-- Might have been more, because I used to do all his Tenckhoff because no-one else would do that.

These are the catheters for dialysis?-- Dialysis, yes.

By peritoneal dialysis as opposed to?-- Haemodialysis.

Yes, haemodialysis, thank you. All right. Are you aware of there having been any complication, and can I pause to say that I'm not asking this question with a view to enabling any criticism of you at all, Doctor, but are you aware of there having been any complications in the catheters that you placed?-- It is not common, not common, sometimes catheters get blocked.

Yes?-- With reality, you can get infection.

Yes?-- And those are the complications that normally happen.

Yes. Okay. So as far as you're aware, there may have been some complications but nothing that you regarded as being out of the ordinary?-- No, not a lot. Maybe one or two or something like that.

Thank you. Thank you, Doctor. That's all I have, thank you, Commissioner.

COMMISSIONER: Yes.

MR FREEBURN: Commissioner, can I raise one matter before I start my questions?

COMMISSIONER: Yes.

MR FREEBURN: It is a question of relevance. You will see paragraphs 12 to 19 of the doctor's statement refer to what can be described as a pay dispute. Nobody seems to have asked questions of the doctor about that. It does seem as if those paragraphs 12 to 19 are entirely irrelevant to the Terms of Reference.

COMMISSIONER: Mmm.

MR FREEBURN: And I'd seek that a direction that those matters are irrelevant and need not be cross-examined.

COMMISSIONER: I won't make that direction at the moment. I'll bear your submission in mind.

MR FREEBURN: Thank you.

CROSS-EXAMINATION:

MR FREEBURN: Doctor, my name is Paul Freeburn. I appear for Mr Leck. Can I just ask you firstly about the position of Director of Surgery. The sequence is this way, isn't it, you were encouraged to apply for that position by Dr Nydam?-- That's right.

You wouldn't otherwise have applied for the position?-- No.

And you said in your statement that you weren't keen on the position. You say that in paragraph 32 of your statement. Do you see paragraph 32?-- Thirty-two.

The bottom of page 4?-- Yes.

You say there, "I was not keen on the position but applied for it after this request by Dr Nydam"?-- Okay.

You were then unsuccessful. The Yugoslavia doctor was successful but he didn't take up the position?-- He didn't.

And you resigned, at least you tendered your resignation on or around about the 28th of December 2002, effective three months' later?-- My resignation was not based on this. I was-----

No?-- I - I was looking for jobs close to my place because I was travelling from Brisbane to - my family was in Brisbane.

Yes?-- And I was travelling weekends up and down.

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Yes. We'll get to that. So you resigned or gave notice of resignation in late December. Now, when you resigned, the hospital was in the position of re-advertising the Director of Surgery position?-- They probably advertised long before that because when they give me - again didn't give me the job, they had to advertise again for that post. That was three months-----

So what's your recollection of when they started to re-advertise the position?-- I don't know what happened because I was not interested, I was leaving.

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Right?-- So when the job was not offered to me, obviously they had to advertise it again to get someone.

Right. You were keen to get closer to Brisbane?-- Yes.

And it was always your intention to return to work near your home?-- That's right.

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At Bracken Ridge in Brisbane?-- That's right.

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And the reason you left Bundaberg was really unrelated to the unsuccessful application you had made for the Director of Surgery position?-- No, no.

Sorry?-- It is not the reason why I left.

No?-- No.

So the reason you left Bundaberg is unrelated to your application for Director of Surgery position?-- Yes.

Can I just ask you to go to paragraphs 37 of your statement: "I did not leave the hospital at Bundaberg because I was not successful in obtaining the position I applied for." That's correct, isn't it?-- That's correct.

And paragraph 39, "While I was working at Bundaberg it was always my intention to return to work nearer my home at Bracken Ridge where my family was residing."?-- That's correct.

That's correct, too. Do you recall that you gave evidence for the last Commission by telephone, and I gather that was a fairly unsatisfactory exercise. Do you remember that?-- Yes.

But one of the answers - one of the answers you gave - and this is at page 5047 of the transcript - and I will just read it - you probably don't have that, doctor?-- I don't have it, no.

I will just read it and you tell me if it is true. Mr Andrews says, "Doctor, if you had been appointed Director of Surgery at the end of 2002, would you have remained at the Bundaberg Base Hospital?", and your answer was, "Not really, that's not the reason why I left the hospital." That's a correct answer, isn't it?-- No, what I meant was I would have accepted the job but still would have left the hospital if I got a job close to my place.

Right. So the answer is you were keen to return closer to Brisbane?-- Closer, yes.

And I think you said before in evidence that it is 85 kilometres closer?-- Closer to, yes.

In Hervey Bay?-- I said one hour driving.

Right.

COMMISSIONER: When you say you'd have left had you got a job closer to Brisbane, do you mean a job of the same standard as director? Supposing, for example, you had been appointed Director of Surgery on a higher salary than you were presently being paid, suppose that had happened and you still wanted to get closer to Brisbane, I understand it, had you been unable to obtain a position equivalent to your new rate of income, would you have stayed in Bundaberg?-- No, I would have-----

You would have still gone?-- -----still gone, yes.

All right, thank you.

MR FREEBURN: One - just one more further point, doctor: you say in your statement that any issues you had with management during your time at Bundaberg "were not major issues and I worked with them", meaning management, "in an amicable manner." That's paragraph 40 of your statement?-- Yes.

That's correct, isn't it?-- Yes. There were some minor issues but I was not worried about those things.

Thank you, doctor.

MR FITZPATRICK: Thank you, Commissioner.

CROSS-EXAMINATION:

MR FITZPATRICK: Doctor, I am Chris Fitzpatrick and I act for Queensland Health. Just a couple of questions, if you don't mind. Doctor, you have said in your statement that you weren't keen on the Director of Surgery position at Bundaberg but that under encouragement from Dr Nydam you applied for the position?-- That's right.

Do you remember giving that evidence?-- Yes.

Is it true that you were also encouraged to apply by Dr Anderson?-- Yeah, I - every - almost everyone wanted me to apply for that job.

I see, including Dr Anderson?-- I think so. I can't remember exactly but I can remember Dr Anderson asking me to apply for that job.

Now, Dr Nydam has said in evidence to the Commission that one of the reservations that you expressed to him about the director's position was that as you had earlier worked at the Bundaberg Hospital as a trainee registrar, you felt some discomfort in applying for the directorship. Do you remember having that discussion with Dr Nydam?-- No, I don't think I said anything like that.

All right. Might you have done so?

COMMISSIONER: He said "I don't think I said anything like that."

MR FITZPATRICK: All right. You accept that there was an interview process for the directorship?-- Yes, there was an interview, yep.

And that the interview panel was made up of Dr Nydam, the then acting Director of Medical Services at the hospital?-- Yes.

And also Dr Anderson who was then a VMO. And I think Mr Leck, is that so?-- Mr Leck, yes.

And following the interview of yourself and Dr Strekov, I think, the position was offered to Dr Strekov?-- That's right, it was, yeah.

And the Commission received evidence that by letter of 15th October 2002 you were advised that you had not been successful in obtaining the position. Do you recall receiving a letter of about that date?-- I don't recall receiving a letter but I can remember Kees Nydam talking to me about this.

All right. Dr Nydam's told the Commission that he and you did have discussions about the outcome of your application, and in particular about your performance at the interview. Do you remember having those discussions?-- I don't think he mentioned that. He gave me two reasons why it was not given to me and I mentioned those earlier.

Dr Nydam has given evidence that in his discussions he told you that your performance at the interview did not reflect well in terms of your capabilities and skills?-- He didn't ask this question when Pitre Anderson asked, when I asked.

No, I am asking you to consider the discussions that you had with Dr Nydam after you were unsuccessful in obtaining the position, not the committee meeting?-- There wasn't a discussion. He came and told me why he didn't offer me the job. I just listened, that's all.

Yes. And Dr Nydam has given evidence to the Commission that after the interview, he became opposed to your appointment as the Director of Surgery but that Dr Anderson favoured it. Do you know whether that's so or not?-- Must be because Dr Anderson was very unhappy that I was not given the job.

All right. Now, from your knowledge of Dr Nydam and Dr Anderson and Mr Leck, do you think it reasonable that if Dr Nydam opposed your appointment to the position of Director of Surgery, that you would have been successful in obtaining the directorship if it was?

COMMISSIONER: How can he speculate about that.

MR FITZPATRICK: Well, he knows - with respect, Commissioner, he knows the three gentlemen who made up the committee. I mean, he may say that he can't.

COMMISSIONER: I will let you ask it. I don't see how helpful it is, but go ahead.

MR FITZPATRICK: Thank you, Commissioner.

WITNESS: What I didn't understand was why he wanted me to

apply and why did he reject me, and Dr - when Dr Anderson asked that question, none of them could answer that question. 1

MR FITZPATRICK: All right?-- So what I felt was I thought this is just to humiliate me or to take revenge from me for what I did about my salary, because they signed the contract and they went back on that and I had to go to the union and fight for almost 17 months to get my backpay and my position. So they didn't like it. 10

Yes. Did you ever complain to Mr Nydam about your failure to get the directorship to Dr Nydam?-- Oh, there was a discussion every day, like, you know, I mean, I used to talk to Nydam - I asked him - I asked him after, after I approached Kees Nydam and said to him, "Why do you do these things? You signed a contract and you go back on it?", and then his answer was-----

COMMISSIONER: You are talking about two different things here. 20

MR FITZPATRICK: I am speaking about the time when you applied for the Director of Surgery. So this is in the later part of the 2002 year. Are you with me?-- Yes.

Now, I am asking you whether, after you were unsuccessful in obtaining the directorship, you ever complained to Dr Nydam about that?-- No, I didn't.

After Dr Strekov refused the directorship, were you aware that it was readvertised?-- I don't know. I mean, they would have readvertised. I don't know if they readvertised. They didn't give it to me. That's why when Dr Anderson - when Dr Anderson asked Dr Peter Leck and Dr Nydam why wasn't it offered to me when the other doctor didn't accept, they didn't answer that question. They kept silent. 30

Why was it that Dr Anderson was asking these things and you were not?-- Because I was not really keen to get this job. I said that in the beginning, I didn't apply for this job. I applied because Kees Nydam wanted me to apply for the job. 40

Yes, thank you, doctor. Yes, thank you, Commissioner.

COMMISSIONER: Thank you. Mr Andrews?

RE-EXAMINATION:

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MR ANDREWS: Doctor, if you had been given the job of Director of Surgery, you say in your statement that you'd have accepted the job?-- I would have accepted the job.

You have also told us in evidence today that you'd have left if you had found a job near Brisbane?-- Yes.

I wonder, if you'd been offered the job of Director of Surgery and accepted it, would you have actively continued to search for a job in Brisbane from the time you received your new position?-- Yeah, that's my main aim, actually, since I started working in Bundaberg, I was looking for jobs closer to my place, and I - to be honest, I didn't expect to find a job so soon to leave Bundaberg.

I have no further questions, Commissioner.

COMMISSIONER: Thank you. Anyone not agree with Dr Jayasekera being excused? Thank you, doctor, you are excused from further attendance here?-- Thank you very much.

WITNESS EXCUSED

COMMISSIONER: I will take the morning break now.

THE COMMISSION ADJOURNED AT 11.12 A.M.

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THE COMMISSION RESUMED AT 11.34 A.M.

COMMISSIONER: Just before you go on, Mr Andrews, I have another letter faxed to me today from the Premier. It is facsimile dated 26 September 2005 and it relates to some matters I raised with the Premier arising out of an email to me from Ms Deanne Walls of Rockhampton. That will be Exhibit 382.

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ADMITTED AND MARKED "EXHIBIT 382"

COMMISSIONER: Yes, Mr Andrews.

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MR ANDREWS: Thank you, Commissioner. I call Dan Bergin.

MR BODDICE: Commissioner, we seek leave to appear on behalf of Mr Bergin.

COMMISSIONER: Yes, thank you.

DAN BERGIN, SWORN AND EXAMINED:

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MR ANDREWS: Mr Bergin, you have prepared a statement of 21 September 2005 of 17 pages with numerous annexures, is that correct?-- Yes, sir.

Are the opinions expressed in that statement honestly held by you?-- Yes, sir.

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And the facts that you recite in that statement, are they all true to the best of your knowledge?-- Yes, sir.

I tender that statement, Commissioner.

COMMISSIONER: Well, that will be Exhibit 383.

ADMITTED AND MARKED "EXHIBIT 383"

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MR ANDREWS: Your formal qualifications are that you hold a Bachelor of Commerce from the University of Queensland?-- Yes, sir.

You are the zonal manager of the central zone?-- Yes, sir.

Mr Bergin, that means that you have responsibility not just with respect to Bundaberg, but, indeed, with respect to some hospitals in Brisbane?-- Yes.

Some major ones; the Royal Women's-----?-- Yes, yes, that's correct. I am responsible for all health services North of the Brisbane River to Rockhampton, up to and including Rockhampton, and then out to the Northern Territory border. That consists of roughly 40 per cent of all of the services that Queensland Health provides. Just to put it in context, I think there is about 25,000 staff, a budget of $1.5 billion. And to put Bundaberg in context, Bundaberg would represent 5 per cent, roughly, of all the patient activity within the central zone.

Mr Bergin, you have no clinical qualifications?-- No.

And how many persons report - well, I am aware from your statement that Mr Leck was a person whose obligation was, in some respects, to report to you?-- Yes.

How many other persons report to you?-- All of the other district managers. So in total there are 15 districts within the central zone, so therefore 15 district managers. In addition to the district managers, the manager of the central zone management unit reports to me. That's a unit which supports me and supports the district in terms of our role.

Thank you. Between the 1st of April 2003 and the 1st of April 2005, you visited Bundaberg at least three times. For what purpose?-- I - it was part of a program of visits where I visit each district on perhaps once or twice yearly basis, some more than others, I guess for the purposes of meeting with the executive - district manager, the executive, to discuss what issues are occurring in the district, to raise issues that I have in respect of that district's services, and to meet with other individuals and groups of staff, depending on what the particular issues at the time are.

Do you recall why you visited Bundaberg during that period, whether - I mean, were there any particular issues that you wished to raise?-- During that period, I can't recall any specific issues, with the exception perhaps of the Mental Health Service where there had been issues with that service at Bundaberg, and I can recall during one visit meeting with some mental health nurses in relation to, I guess, some problems that were occurring with the Mental Health Service at the time.

And I am thinking of the three or so physical visits that you made to Bundaberg?-- Yes.

Were any of them in response to requests from persons at Bundaberg that you visited?-- Not that I can recall, no.

So should I conclude that your three physical visits were - except for the Mental Health Unit - to touch base with the

administrators?-- Yeah.

At Bundaberg?-- Yes, that's right. Not just with the administrators, of course. I would try and meet with groups of nursing staff, medical staff. I felt it was important to try and, I guess, keep in touch with any issues that they were feeling about the place, and with the visit where I spoke to the mental health staff, that wasn't at their request. The district manager had suggested that it might be a good idea if I spoke to and listened to the nurses in relation to their issues about what was happening with the mental health service at the time.

During that two year period you had telephone conversations with Mr Leck every one or two weeks?-- That's - that's a - I guess an estimate to the best of my recollection. It would depend, of course, on the issues at the time. I might have more frequent contact if there was a particularly hot issue going on, but on average I guess that's probably about the best I could come up with.

Would the conversations be initiated by Mr Leck as district manager or by you bringing an issue to Mr Leck's attention?-- I can recollect both, yes.

And you received, apparently from Bundaberg and other hospitals, weekly significant issues report?-- Yes.

And would that report come from the district manager?-- It would come through the district manager. It may have been compiled by other people but I would understand that it would come through the district manager, yes.

Well, it seems that in writing and by telephone you'd have been contacted by Mr Leck or spoken with him at least weekly?-- Yes.

And, indeed, possibly three times a fortnight?-- Yes.

During these conversations, would Mr Leck - who I understand was not a clinician - would clinical issues be raised?-- I can recall having discussions with him, for example, about starting up an ENT service, an ear, nose and throat service in Bundaberg, and I can recall discussions about trying to get an improved ophthalmology service, just as two examples. I can't recall any other specific ones but I would think that we would have discussed some issues of that nature from time to time.

And particular medical staff?-- I can recall certainly - whether it was in the two years that you speak of, but certainly going further back there were quite a lot of discussions about the Director of Obstetrics and Gynaecology.

Am I to assume that they were about that person's competence?-- Yes.

I see from annexure 1, which is the position description for your position, that at item 9, the very last, it observes that

"the successful applicant will be required to enter into a performance-based contract of employment for a term of up to five years." Are you able to tell us what the performance criteria are for your position?-- Quite frankly, no. I have - I am not aware of any performance criteria that have ever been developed for the position.

You first - I beg your pardon. You became aware, you observe, of Dr Patel on the 2nd of February 2005. Do you mean, Mr Bergin, that until that time there had been - you were entirely unaware of that gentleman's existence?-- Yes, yes.

I will put on the screen your attachment 2. As I understand it, that's the written evidence of the first occasion when Dr Patel came to your notice?-- Yes.

If I start at the bottom of the page, I assume that's where the e-mail begins, it appears that Dr Gerry FitzGerald e-mailed you?-- Yes.

And that's the 2nd of February 2005, am I correct?-- Yes.

The handwritten additions are my own efforts to interpret the printing. Now, is it common that you would be informed of an investigation into surgical outcomes-----?-- Yes.

-----for a doctor in your district?-- Yes.

In your zone?-- Yes.

Can we move up the page, please. And it seems that you're suggesting to Dr FitzGerald that Dr Patel was a person about whom you had not been briefed by that stage?-- Yes, and can I add that I guess the way I phrased that e-mail was not just for Dr FitzGerald's benefit, but for Peter Leck's benefit, because I copy them in and I suppose the wording I used was to indicate my displeasure at not being informed.

Thank you for anticipating my next question. Can I move to the top of the page. It appears in this attachment that it is a copy of a set of e-mails which were sent by you to Peter Leck and that it includes also Mr Leck's response on the 2nd of April at 7.43 p.m.?-- Yes.

And it seems from that response Mr Leck was indicating that he had prepared a brief over the last couple of days but hadn't submitted it to you yet?-- Yes. I subsequently received a brief dated the 1st of April - 1st of February, on that day or the day after, I forget which.

COMMISSIONER: It could hardly have been that day because this seems to be 7.23 p.m.?-- Commissioner, I'm just - I just can't recollect whether I received it on the 2nd after that or - you know, whether it was in the mail, so to speak, or whether I received it the following day when I actually visited Bundaberg.

MR ANDREWS: I see that Mr Leck's e-mail suggests that it has been submitted. Is it the case that you can't remember whether you had received it by 7.43 p.m.?-- That's right, yes.

And I will put on the screen attachment 3. Is this the briefing note that you received either on the 2nd of February or the 3rd?-- Yes.

This is the document that came from Mr Leck?-- Yes.

Could you move down the page, please, the subject being, "The Director of Surgery"?-- Yes.

Now, the note at the bottom appears to have a space for a date to be inserted and it looks as if it's a note you'd have prepared, but this is in fact a document that came from Mr Leck. Am I correct?-- Yes, that's right.

May I see the second page, please. The background - well, "The purpose", does it read, "To provide an outline of current issues within the Bundaberg Health Service District"; is that correct?-- Yes, yes.

Perhaps before I go on asking you to confirm what the printing reads, do I gather from the e-mail that you'd copied to Mr Leck on the 2nd of February, the displeasure that you spoke of that it was your opinion that a District Manager had a duty to keep you informed of matters such as concerns with the clinical performance of a Director of Surgery?-- Yes, on the basis that there was an obligation to keep me informed of significant issues, and I would certainly describe this as a significant issue.

I would ask you to explain to me what were the features of this that made it significant, for I'm unsure whether it's because the target for investigation was a person holding such a responsible position or whether it was because of the allegations that had been made about that medical practitioner. What feature?-- Well, I guess the nature of the allegations made by other staff in respect of Dr Patel's clinical performance such that the District Manager certainly felt that it warranted an expert clinical review. That to me would - certainly should be considered as a significant issue.

Would it be fair to say that at the very latest by the time that a District Manager felt that a matter warranted external review you ought to have been informed?-- Yes.

Now, the background that you have been advised of, does it read, "Several nurses have placed in writing their concerns that the Director of Surgery has been performing procedures for which he has insufficient skills with consequent adverse outcomes."?-- Yes.

"The Chief Health Officer will be conducting a review of the cases commencing 14 February 2005."?-- Yes.

"The Director of Surgery has indicated that he plans to cease his contract with the Bundaberg Health Service District at the end of the financial year."?-- Yes.

Now, I'd understand that to mean on the 30th of June. Is that how you would read it?-- Yes.

"Some nursing staff have advised the QNU of their concerns.

The QNU have directed them back to the district management."?-- Yes.

"The Director of Surgery has been directed not to undertake certain procedures until the review is complete."?-- Yes.

Did you make contact with Mr Leck after receiving this briefing note?-- Yes. At my visit to Bundaberg on the 3rd of February, Peter Leck and I discussed this issue, and I can specifically recall asking him as to the nature of their restrictions to be put on Dr Patel and indicated that complex procedures requiring an intensive care bed. That, as I can recall, had been discussed with Mr FitzGerald who agreed that that was a reasonable restriction.

So this is information Mr Leck's given to you?-- Yes.

So, Mr Leck conveyed to you that he discussed it with Dr FitzGerald, Dr FitzGerald had opined that it was a reasonable restriction. Do you have any details about the complexity of the procedures?-- No.

Was there any discussion by Mr Leck about the next item, that is the item of, "Background.", "Personal animosity between the Director of Surgery and some nursing staff, particularly in ICU, was reported prior to the receipt of allegations."?-- Yes, there was, and Mr Leck indicated to me that he was uncertain as to whether this was an issue of interpersonal conflict or whether there was something of a clinical concern. He seemed to be genuinely uncertain as to what it was.

Thank you.

COMMISSIONER: Can I take you back to the first item there?-- Yes.

About the nurses having placed in writing their concerns. Did Mr Leck explain to you the nature and extent of the complaints which had been made?-- Commissioner, I can't recall that.

If there's been substantial complaints over a long period of time, say more than a year-----?-- Yes.

-----and he told you about that, you'd remember it, wouldn't you?-- I can't recall him mentioning any particular time period.

No, that's not the question I asked you?-- Sorry.

If, in fact, he had told you-----?-- Yes.

-----about complaints, quite a large number of complaints extending back over a period of 12 months or more-----?-- Yes.

-----you'd remember that, wouldn't you?-- I would expect I would, yes.

Yes. 1

MR ANDREWS: May I see the next page? Is that it? Okay. Now, you speak on the fifth page of your statement in paragraph 6b of credentialing and privileging?-- Yes.

You observe you're not aware of any reason why a local Fellow of the Royal Australian College of Surgeons could not have been used for credentialing and privileging, although you observe it's preferable to have the college involved?-- That's right. 10

It's the case, isn't it, that a committee normally is the credentialing and privileging unit rather than a single person?-- Yes, that's right.

COMMISSIONER: You weren't told of any difficulty in forming a committee, except so far as the involvement of the college was concerned? Apart from that there was no reason, you were told, why a credentialing and privileging committee could not have been formed at any time?-- That's correct, Commissioner. 20 I think I put in my statement that we became aware of some difficulties particularly associated with getting college representation.

That wouldn't have prevented a credentialing and-----?-- No. My view was it certainly was better than not having anything.

Of course.

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MR ANDREWS: Indeed, I will come shortly to attachment 4 which is where you raise the topic of credentialing and privileging. But I'm interested, Mr Bergin, to know what understanding you as a zonal manager have of the intricacies of credentialing and privileging. Are you, for instance, aware of what process the committees are supposed to undergo when determining what privileges to assign to a particular practitioner?-- To the extent that I'm familiar with the credentialing and clinical privileging policy of Queensland Health. I myself have never taken part in a credentialing and clinical privileging 40 committee, so I guess I'm not aware of the intimate details of perhaps how that is undertaken, but I am reasonably familiar with the policy.

Have you had discussions at any time with members of credentialing and privileging committees which have left you with a knowledge of the processes that have been employed in the past?-- I have had - I have had some discussions, I believe - I seem to recall, with the person who heads up our rural credentialing and clinical privileging committee that 50 covers the rural districts within the central zone. That's Dr Even motor really^ and we were reasonably familiar with some of the issues associated with those rural committees, perhaps not specifically with the committees associated with the larger places such as Bundaberg.

Would you look, please, at the briefing to you dated the 12th of November 2004, attachment 4, which I will put on the

monitor. This is a briefing of the 12th of November 2004. Were you aware prior to that date that there was a problem in Bundaberg with respect to performing - I beg your pardon, with respect to forming a credentialing and privileging committee?-- Just prior to then. The results of the survey which have been undertaken of districts to try and find out what problems were being experienced had come back and that indicated that there were problems at those places and also the course of action that they intended to take to try and overcome those problems, and that was in October.

But my question was were you-----?-- Sorry.

-----aware of it prior to this, and do I understand from that answer that the first time you were aware that there were problems forming a committee was in October 2004?-- Yes, yes.

Would that be an issue that ought to have been brought to your attention by persons at a hospital such as Bundaberg?-- Yes.

So if there were problems forming a committee in - if there was no committee existing as required by the Queensland Health policy, you ought to have been informed promptly?-- Yes.

If it's the case that there, for instance, was no committee formed in 2002 when it seems the latest version of the policy was published, would it be fair to say that you ought to have been informed some time in 2002?-- Yes.

COMMISSIONER: Immediately that became a problem - well, a perceived problem?-- Yes. I mean, I would think as soon as it appeared that the problem couldn't be overcome at a local level, and I would have expected people to raise that and to seek some assistance in overcoming those problems.

Thank you.

MR ANDREWS: And the persons who ought to raise it with you and seek assistance would be the District Managers?-- Yes.

May I see the second page of annexure 4. Now, the background of this briefing note seems to be that, "Credentialing and clinical privileging has been an essential part of health care governance for many years." Do you understand it to be a process whereby the capacities of a new employees are determined so that the employee will operate within his or her own capacities and the capacities of the hospital for the safety of the patients?-- Yes, very much so.

And did you - were you aware that it was regarded as an essential part of health care governance?-- Yes.

Is it fair to say it's not something that ought to have been ignored simply because it was too difficult to arrange?-- Definitely not.

It seems that there was a major quality project which was done to formalise arrangements through the development of a zonal

rural credential and clinical privileging committee or committees?-- Yes.

The word "rural" in that description, rural credentialing and clinical privileging committees-----?-- Yes.

-----was that a particular set of committees designed for only those rural hospitals of which you spoke?-- Yes.

But exclude Bundaberg?-- Yes.

So, this background about the development of zonal committees shouldn't be read as suggesting that there had been zonal committees set up to cater for hospitals such as Bundaberg?-- No. It was more the smaller rural districts.

Did you by the time of receipt of - perhaps - may I see the next page, please. The proposals that were the subject of discussion, were they for hospitals including those of size of Bundaberg or were they to be limited just to rural hospitals?-- I believe that this document covers both proposals for rural districts as well as the - I guess what I'd call the regional hospitals.

And because of the mixture in this briefing note of references to both rural hospitals and larger hospitals, I want to revisit an answer you gave me before. Is it correct that by the time you received this briefing note you were aware that at Bundaberg there was no appropriate credentialing and privileging committee operative?-- Yes.

Is there anything else to follow that page? It seems that there was a recommendation that a group of medical superintendents develop a proposal for clinical privileging of doctors providing outreach services. Now, that's with respect to doctors who travel from a particular hospital out to remote areas, isn't it?-- It could also include - yes, it is, and it could also include, for example, doctors from metropolitan hospitals who provide outreach services to other hospitals, either rural or regional hospitals.

There were no recommendations then apparent in that briefing note for the establishment of appropriate committees at hospitals like Bundaberg?-- Well, I think that the document acknowledges that an approach had been developed between Bundaberg and Fraser Coast to form a shared committee to attempt to overcome the problem of getting appropriate expert medical representation.

Thank you. There was a secretariat that provided services for credentialing and privileging committees?-- Yes.

Wasn't there?-- Yes.

Did it provide - now, that was - it's referred to in that annexure?-- Yes.

Which I don't have to hand at the moment?-- Yes. I am aware

of that. 1

That secretariat, it was something under your control?-- Yes, based in the Central Zone management unit, and it would support the rural credentialing and clinical privileging committee.

So not the committees-----?-- No.

-----of the hospital such as Bundaberg?-- No,. 10

At the zonal forum with district managers in November 2000, it was recognised that there was a need to progress privileging processes regardless of the fact that colleges might not have nominees?-- Yes.

And it was noted that such processes could be performed remotely if travel was a concern?-- Yes.

Does that mean that committees could be set up to privilege a practitioner without necessarily travelling to the place where the practitioner worked?-- That was our understanding, that if there was some difficulty in getting practitioners locally to attend meetings or, indeed, any appropriate practitioner nevertheless to attend meetings locally, that practitioners could link in by telephone into that process and therefore we could expand the range of people potentially who could support these processes, perhaps from the metropolitan hospitals, for example. 20

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Mr Leck left the meeting for important reasons because of the tilt train derailment?-- Yes.

Was this topic of credentialing and privileging brought, do you know, to his attention? Was it of such importance that you would have had somebody inform him of what transpired in his absence?-- I can't recall that that did occur.

COMMISSIONER: That was discussed while he was still there?-- No. We----- 40

It wasn't?-- Commissioner, we believe that by this stage he'd gone.

I see?-- Yes.

MR ANDREWS: There is because the tilt train derailment had just occurred?-- Yes.

And that was naturally a matter of greater priority at that time?-- Yes, yes. 50

You speak at paragraph 6f of the importance of the comprehensive clinical credentialing and privileging processes. By "a comprehensive process", I'm interested to know whether you consider that privileging might involve a consideration by the committee of matters with greater particularity than simply whether a person is a general

surgeon or an orthopaedic surgeon or if such a thing exists a paediatric surgeon or a plastic surgeon and whether the process would also involve in Queensland consideration of particular limits on a general surgeon's practice. Are they matters within your knowledge?--

I believe that they are matters that are important. To what extent they are considered, I guess I'm not aware. However, I think it is important that particularly, for example, where complex procedures are involved, that that's clearly sorted out upfront in terms of both the clinician's expertise but, as importantly, the facility's ability to be able to provide those - those procedures or services.

There was evidence that some time in the last couple of months I think there was a direction from Dr Scott that I think it was Whipple's procedures and oesophagectomies should be performed only at a particular facility in Brisbane. Do you remember such a direction?-- Yes, very much.

Now, those two procedures, would that mean anything to you as a non-clinician?-- I am aware that they are very complex procedures. The Whipple's in particular, I was - I had been briefed on that operation when I was down the Gold Coast.

How long was that?-- Oh, this would be five or six years, and I had been made aware that they consumed an enormous amount of theatre time and at that time some concern was expressed as to whether we should be doing them down the Gold Coast.

Can you compare - well, was the concern for the sake of the patients or for some other reason?-- I - I wasn't aware - it certainly wasn't brought to my attention about concern for the patients as much as the concern that it was occupying our theatres for I seem to recall something like 10 to 12 hours at a stretch and obviously that meant that a lot of cases that could have been done couldn't.

COMMISSIONER: It was pretty plain to you though that it was a very complex procedure?-- Definitely.

And it required a highly skilled surgeon to be involved in?-- Both a highly skilled surgeon and also the capacity of the hospital to support that procedure.

Yes, well, a team of support staff?-- Yes, yes, yes.

MR ANDREWS: And this came to your knowledge while you were at the Gold Coast and you were there in the role of District Manager?-- Yes.

COMMISSIONER: The matters I raised with you though seem to me to be matters of safety of the patient. That you require a highly skilled surgeon and a substantial support staff?-- Yes. Yes, Commissioner.

MR ANDREWS: Are you in a position to say whether District Managers generally ought to have known those things that the Commissioner just raised, that a Whipple's procedure required a highly skilled surgeon and support staff?-- I think that - no, I wouldn't expect particularly District Managers from a non-clinical background to be aware of the level of complexity if you like of those procedures.

COMMISSIONER: But a District Manager should be aware, should make himself or herself aware of the limitations of his - his or her own hospital and the skills of the surgeons in that hospital?-- I would - I would agree, Commissioner, that it is important that the District Manager is assured that the staff and the facility are operating within their limits.

Yes?-- And providing safe care.

And you can't get that assurance only from the staff in the hospital, can you?-- I think - well, I - I'm not sure about that but I guess what I would say is that if, for example, you were looking at getting into a new procedure, and I've said this to District Managers in the past, that it would be important to get someone, particularly a surgeon who has got well regarded experience in that particular procedure, to come along and advise as to whether you've got everything you need to perform that procedure adequately.

But whether it's new or old, shouldn't there be a regular assessment of all hospitals by experts as to whether the quality of the surgeons in that hospital and the quality of the hospital is capable of safely performing procedures which are or being thought to be performed in that hospital?-- I certainly couldn't disagree with that and I believe that the Service Capability Framework is going down that path.

Well, what - was it on that path in 2004 for example?-- Well, the Service Capability Framework, as you probably are aware by now, doesn't actually go down to defining what procedures can be done.

Was there anything in place prior to the termination, for example, of Dr Patel's term at Bundaberg which ensured that there were experts who could determine what the surgeons at Bundaberg Hospital could and could not do at Bundaberg?-- Not in any systemic fashion that I'm aware of.

In any fashion at all?-- Only - only if action was taken by the hospital or somebody else to actually look at those particular procedures in terms of whether it was appropriate that they be done.

But do you think that was part of your function?-- Well, I didn't at the time. I guess our function has been very much in supporting the role out of the Service Capability Framework and you will see in the documentation that we actually held a workshop just after the incidents you're referring to now in December to actually get that embedded in our system to try and ensure that the hospitals were operating at an appropriate level as against that Service Capability Framework.

Well, when you talk about Service Capability Framework, you have to know what the service capability is, don't you, before you can determine some framework?-- Yes, and I guess it's a case of gradually becoming more specific. The Service Capability Framework talks about appropriate levels of the various services but it hadn't actually got into the level of

what procedures could be safely done at each facility. Now, I understand that that work is ongoing and hopefully we will - we will get there sooner rather than later but at that stage there was no - no document, there was nothing that hospitals could really refer to to say whether it was appropriate that a particular procedure could be done at that hospital. It was very much-----

Or no way of assessing that question?-- That's right, and-----

And it still isn't at the moment?-- Yes, I'd say that's the case right now.

All right. Thank you.

MR ANDREWS: If there is no way of assessing whether a procedure should safely be undertaken or should be undertaken at a hospital because of the risks to patient safety, then I suppose a District Manager would be particularly reliant upon the credentialing and privileging committee to determine such matters?-- Yes, very much so.

And so, if a District Manager doesn't have the advantage of a recommendation from a credentialing and privileging committee, wouldn't it become then even more important that the District Manager should make a determination about what are the capacities of the hospital being managed?-- He - he would certainly want to develop some way of giving him assurance - he or she assurance that whatever is being provided at the hospital is safe. I guess-----

It should really be done in advance, shouldn't it? I mean-----?-- Oh, definitely. Definitely.

By "in advance", I mean the District Manager ought to be making an assessment about these things and issuing a directive or ought to be consulting at an early stage in his or her employment so as to be able to make a directive rather than running the hospital on a trial by error basis - on a trial and error basis?-- Well, you certainly want to make sure that there are some proper credentialing and clinical privileging processes in place. That's the - that's the essential I guess. It gets more difficult after in terms of the particular procedures though because that's not - as I understand it, that's not a clear-cut issue.

Is it the credentialing and privileging committee that determines the capacity of the hospital to cope with particular procedures or is it the administrator, the District Manager, who does so?-- I - I know - I recollect from the policy that I believe that input is made by the hospital administration into the credentialing and clinical privileging committee. So I guess the committee, as I understand it, would be relying upon that. Now, actually what happens in practice in these committees, whether it varies from that, I'm not sure.

Is it fair then for one to criticise Mr Leck to this extent,

that if this had been a credentialing and privileging committee, according to the policy Mr Leck still would have had an input of advising them about the capacities of the hospital and without a credentialing and privileging committee, Mr Leck's duty was even more onerous to satisfy himself as to the capacities of the hospital and the capacities of the doctor?-- I would certainly think that it would be a high expectation on Mr Leck to be able to offer that sort of advice to the committee in relation to what was the capacity of the hospital to undertake particular procedures because I wouldn't have thought Mr Leck personally would have had that ability to know that.

Ought a District Manager to be concerning himself or herself with whether the fact that there is only a level 1 ICU would mean that there are certain procedures that ought not to be undertaken at the hospital?-- Certainly if there was a difference between how the unit was attempting to operate versus the Service Capability Framework assessment, then the hospital would need to look at what it was going to do to properly manage that and deal with it.

You say the hospital ought to look at. Should a District Manager-----?-- Well, a District Manager. The District Manager.

COMMISSIONER: And no doubt he would be looking to the Superintendent Director of Medical Services for advice on that matter?-- Very much so.

MR ANDREWS: You observe at paragraph 6(f) that the presentation in early December highlighted the risks if medical staff were appointed prior to consideration of a committee or to assessment of interim privileging?-- Yes.

Now, if there are overseas trained doctors, indeed recruits from overseas, it's often the case that they are engaged on a contract and brought to Australia after they have a conditional contract, isn't it, so that they are - the expenses incurred of bringing them to Australia and transferring them to the regions subject to a conditional contract, if they become registered?-- I don't have any personal knowledge of that, no.

You say at the bottom of subparagraph (f) that the service agreement with districts including Bundaberg required compliance with the credentialing and clinical privileging policy?-- Yes.

As I look at the service agreement, which seems to be annexure 7?-- Yes.

I don't see a requirement within it of compliance with the policy, at least not expressed within it. I wonder whether you can tell me, have you perhaps overstated it by saying that this service agreement required compliance?-- Well, on page 10 of the service agreement, the first undertaking under "Healthier Staff", "Strategic Intent: Healthier Staff".

I have that page. I'll put it on the monitor. Is that the section you refer to?-- Yes, yes.

Well, rather than requiring the reader to do something, isn't it a suggestion as to how - isn't it a suggestion that there should be reporting?-- Oh, no, I - well, I interpret this as meaning that the district is required to comply with the credentialing and clinical privileging policy and there was a particular reporting requirement to reflect how they were complying.

Now, there had been no doubt for any District Manager that there was a requirement to comply with the policy from the time it was published in-----?-- Well, that's right.

-----at the latest 2002?-- Yes. And this was reinforcing that.

Thank you. At paragraph 7 at the bottom of page 6 of your statement a question is - or a proposition is expressed and you were asked to comment on it. It's the last sentence of the propositions: "It's been suggested to the Commission that the complaints handling process has not dealt with matters in a timely and transparent manner and that there is a lack of feedback and follow-up on complaints to the extent that it discourages staff and patients from complaining in the first place." Now, you understand the proposition that is expressed there?-- Yes.

That staff effectively become disenchanted if their complaints aren't dealt with in a timely way and they don't get feedback?-- Yes.

Now, you were asked to comment and while you commented on a variety of things, you haven't commented on that notion or on Bundaberg in particular?-- Right.

Are you aware of that as a vice inherent in a hospital where complaints aren't dealt with in a timely and transparent way, that staff become disenchanted and discontinue complaining?-- I can understand the proposition and I can - I can understand the reaction. If staff were to complain and get no satisfactory resolution, I can understand that that might cause them not to - not to bother complaining again. I suppose I - I put the view that I'm aware of a number of avenues for people to make a complaint. I assumed, because of the number of complaints that I see, that people, staff generally, are aware of the different processes that they can follow to make complaints.

COMMISSIONER: Where are those processes laid down?-- Well, I guess the grievance - the policy that covers staff grievances, Commissioner.

What does it say?-- Oh, look, I couldn't tell you off the top of my head but it is a public service policy that is quite explicit in terms of the process and time frames, I might add,

for dealing with staff grievances.

Right?-- I'm not saying that those time frames will always be adhered to but they are laid down quite clearly and I believe that in the main they would be.

MR ANDREWS: Yes. With respect to staff grievances, the normal process would be one would go to one's line manager?-- Yes.

If one were a junior - or a medical officer in surgery, the line manager for instance would be Dr Patel as Director of Surgery. If one were a nurse, the line manager would be I suppose the Nurse Unit Manager and then the Director of Nursing?-- Yes.

And the person above Dr Patel, if you wanted to complain about him, you might bypass him and go to the Director of Medical Services Dr Keating?-- Yes.

Now, do you have an opinion about whether the complaints handling process at Bundaberg was dealt with in a timely and transparent manner?-- I must say that I was not aware of any complaints about the complaint handling process at Bundaberg so I guess I couldn't offer an opinion either way.

Thank you.

COMMISSIONER: How would ever become aware?-- Well, if people - staff or patients complain further up the line to either myself or, as many people do, write to the Minister or write to the Director-General, make contact with their member of parliament - I mean, I deal with many, many complaints that come through those avenues that people avail themselves of, both patients and staff.

MR ANDREWS: Under Queensland Health Complaints Management Policy there is a requirement for each district to provide an annual report concerning complaints received and organisational improvements subsequently implemented to the General Manager of Health Services. Are such documents - I see that as a proposition put to you on page 8 at (e). Is that annual report something that crosses your desk?-- I - I have never seen or been aware of those documents.

Were you informed of any adverse events at Bundaberg relating to surgery in Dr Patel's time?-- Not that I can recall.

Ought you, under Queensland Health policies, be informed of adverse events?-- Certainly I'm copied into what we call the sentinel events, which are a prescribed list of particular events.

And they include, don't they, unexpected deaths?-- Yes. I believe so.

If a person is undergoing elective surgery in the sense of not surgery which is emergency surgery, any death which occurs

within, for instance, 48 hours of elective surgery would - you would normally expect that to be classified as an unexpected death, wouldn't you?-- I - I, yes.

And you would normally expect that there be a sentinel event form filled in as a result?-- I'm just not sure whether that is in the list of sentinel events that are supposed to be reported on but I would imagine it did.

And the only sentinel event notification you recall receiving from Bundaberg in the two years to April 2005 was with respect to the death of a patient from the mental health service?-- Yes, that's - that's what our records have shown, yes.

COMMISSIONER: Mr Bergin, if - and this is a hypothetical question - there weren't any sentinel events but there was a steady stream of complaints about a particular surgeon, say over a period of 12 months, would you in the normal course of events expect to hear that that was so?-- I - I would think that that - yes, I would. I think that would be included under the category of significant issue, yes.

MR ANDREWS: You were asked at paragraph 8 whether you satisfied yourself that clinical auditing practices were in place at Bundaberg and whether they were adequate. At what appears to be your answer at (ii) on page 9 you say, "Weekly surgical audits have been commenced particularly focussing on complications with surgery." Are you speaking about events after Dr Patel's publicity?-- Yes, just to clarify, my answer to both (i) and (ii) questions are contained above that. You will see (i) and (ii) on the first line of my response.

I do see that, yes?-- Sorry.

Towards the bottom of the page where you have a list of items beginning with, "Weekly surgical audits have been commenced particularly focussing on complications with surgery", that's something you understand to have happened since Dr Patel left the hospital?-- Yes, that - and that's a typo, that should be (iii), sorry. That's the answer to (iii), "What changes have been made at Bundaberg hospital this year?"

Thank you.

COMMISSIONER: Can I just take you back before you go on?-- Yes.

Back to paragraph (e) on the previous page. You said that under the Queensland Health complaints management policy is a requirement for each district to provide an annual report concerning complaints received", and so on. When was that annual report due each year?-- Commissioner, I don't know. I - I wasn't aware of the requirement.

Oh. And you did not receive annual reports?-- No.

Oh, I see?-- And I am not aware of any districts putting those in.

All right.

MR ANDREWS: So it won't just be the Bundaberg health district that was remiss, but every district?-- Well, I - I believe so but I can't be sure of that.

The obligation to put those reports in, was it the district managers?-- I believe so, under the Complaints Management Policy.

COMMISSIONER: You didn't, of course, because you weren't aware of it?-- Yes. Commissioner, I will add that I will concede it is in the Complaint Management Policy and it was only recently that I became aware of it. I haven't - I have never heard of anyone chasing it or-----

No.

MR ANDREWS: Well, that was an obligation for the General Manager of Health Services?-- Well, the reports are to him, yes.

Morbidity and mortality meetings have been commenced, you understand. Who has informed you of all these things?-- The acting district manager.

And that person is?-- Ms Monica Seth.

How many adverse incidents - incident reports - of course you are not a recipient of those documents, are you?-- No, no.

Have there been any sentinel event forms received by you since Monica Seth's occupation of the position?-- Not to my recollection.

You deal at paragraph 9 with a particular incident and your response to the brief that you have received from Mr Leck?-- Yes.

I will put on the monitor attachment 10 now. This relates to a 15 year old male called in the inquiry patient P26. Is my understanding correct that you were first informed about this particular patient on the 5th of January 2005? You will see from the monitor that there is an email from Mr Leck to you?-- No, I was first informed by Dr Steve Rashford-----

Of course, I beg your pardon?-- -----in an email to myself and district executives and perhaps John Scott as well on the 4th, I think.

And Mr Leck gave you a brief with respect to the concerns raised by Dr Rashford the next day?-- Yes.

Can I see the next page, please? Commissioner, I notice that the patient's name does appear in the annexure. It ought to

be deidentified before this statement becomes an exhibit.

COMMISSIONER: Yes. Well, I order that that not be disclosed.

MR ANDREWS: Would you show me, please, the first page on which I have some highlighting? You were informed by Mr Leck that there were certain key issues in respect of this patient but that it appeared that emergency surgery by a general surgeon had saved the patient's life and there had been an attempt to save the limb, that no vascular surgeon was available in the Bundaberg region at the time?-- Yes.

Would you turn the page, please? And there was a concession that "in retrospect, transfer was delayed by a number of days as the condition of the patient's leg failed to improve as quickly as expected, combined with evidence of infection. Transfer was possibly affected by handover of care from initial treating staff surgeon to other staff surgeon", and importantly there is an observation, "ideally the patient should have been transferred to Royal Brisbane Women's Hospital when stable on or about 25, 26 December"?-- Yes.

And in the "action taken/required" section, "Bundaberg Health Service District will institute policy of transfer to tertiary facilities of patients with emergency vascular conditions when condition is stable, ie life and limb are safe"?-- Yes.

Having seen those things, did you form the impression that there was no suggestion of wilful negligence?-- Yes.

That there was no mention of other complaints with respect to any particular surgeon?-- Yes.

That it didn't identify any systemic issue?-- Yes.

And there seemed to be appropriate - an appropriate policy envisaged and proposed to be implemented?-- Yes.

And did you then confirm, by discussion with Dr Rashford, something?-- Yes, I emailed - Dr Keating's briefing note had come via Peter Leck to Dr Rashford and I discussed with him what I proposed to do, which was to get the relevant staff from both hospitals, Royal Brisbane and Bundaberg, to discuss how to better manage these sort of patients in the future so that we didn't get a repeat of what had occurred.

And does attachment 12 show your premise for your discussion that Bundaberg would have or had a policy for transfer as soon as possible after stabilisation of a patient who had had vascular surgery?-- That's right, but also to link in Royal Brisbane to make sure that they played their part in that.

Now, can you tell me, that policy of transfer, did you have a discussion with anybody as to when it was to be implemented, or did you rely upon the briefing note?-- I relied upon the briefing note.

And did you conclude that it was to be implemented - well,

approximately?-- Definitely.

Have you since determined whether or not the policy was implemented?-- I have recently followed up with the acting district manager, who has been unable to locate any policy document at the hospital, and as a consequence I have asked her to expedite the development of such a policy.

If there was to be such a policy at the hospital, is it something you would expect to be put into documentary form, or is it the practice at hospitals that these things are done by word of mouth?-- I find it difficult to say either way, but the clear impression I got from the brief was that there was going to be a documented policy developed.

COMMISSIONER: It would be extraordinary if there was not, wouldn't it?-- Well, given what happened-----

Yes?-- -----yes.

MR ANDREWS: You say at page 11, in the four lines above paragraph 10, that you had been assured of something by Dr Keating. Were you speaking about a conversation or about a document?-- No, no, the briefing note.

You first received a copy of Dr FitzGerald's report, dated the 7th of April, on the 11th of April 2005. Is that the case?-- Yes, that's correct.

You were asked at paragraph 12 whether you consider you were briefed effectively and comprehensively about concerns in public health, including - I beg your pardon, no, you were asked - yes, "Do you consider you were briefed effectively and comprehensively", and I see your answer seems to be, "Apart from the issues with regard to Dr Patel, yes." With respect to Dr Patel, can you tell us what briefs you expect that a district manager or other persons ought to have been giving you and when?-- Well, I would have expected to have been told about any concerns raised in relation to Dr Patel's competence and to have been provided with those when they occurred.

COMMISSIONER: When you were - particularly when you were informed about the incident involving the death, would you have expected to have been told then that there had been a substantial number of other complaints against that surgeon?-- Most definitely.

And what they were?-- Most definitely. In fact, when I became aware that it was Dr Patel who had been involved with that particular case, I was most surprised that I hadn't been informed.

MR ANDREWS: What would you - what was your practice when you were informed by district managers that it was suspected that doctors - particular medical practitioner was not up to standard? Was there anything you would do?-- I can't recall - apart from the case that I mentioned earlier of the Director of Obstetrics and Gynaecology - of any other cases. That case

had been referred to me by my predecessor but I sort of inherited it in terms of dealing with issues to do with the Director of O&G's clinical competence. I suppose, if you are talking to me hypothetically-----

I am looking at, in fact, your answer (d) on page 12 which suggests that there had been instances where you "supported moves by district managers to provide remedial action such as additional supervision or training or to ensure that a doctor's role didn't exceed the doctor's capabilities." That led me to conclude that there were occasions?-- Oh, okay. I guess I am talking there about matters where district managers have informed me when it appears that they have put someone on who really is not up to speed with what they expected, and they have then looked at strategies to, for example, organise supervision of them at another district, or in some way constrain their - the services that they provide. So I suppose this is - I am not aware of any particular briefs on this but it is discussions that district managers have had with me and that they have managed at their level but have made me aware of what was going on. So I guess it wasn't - it wasn't considered to be a very serious matter but it was something that had to be managed.

So medical practitioners in Queensland are from time to time put under supervision if there are concerns about aspects of their practice?-- Well, I am certainly aware of some instances, yes.

COMMISSIONER: Is this a convenient time, Mr Andrews?

MR ANDREWS: Yes, thank you, Commissioner.

COMMISSIONER: We will now adjourn.

THE COMMISSION ADJOURNED AT 1.00 P.M. TILL 2.30 P.M.

THE COMMISSION RESUMED AT 2.31 P.M.

COMMISSIONER: Just before we continue with the evidence, there are two matters I want to raise. The first is that Mr Andrews informed me that the doctor identified by Dr Jayasekera in his evidence this morning is a doctor employed by Queensland Health and working in Queensland. Would you like to explain how you got that evidence, Mr Andrews?

MR ANDREWS: I am grateful a member of the media alerted me, Commissioner. The details are available on the website of the Office of Queensland Practitioner Registration Boards on the medical practitioner's register, and that particular doctor ought, I submit, before his name is released, to be confirmed to be the doctor who worked at Bundaberg. And his name has been supplied to an administrator there who is checking, I understand, as we speak.

COMMISSIONER: I won't make any order lifting a suppression order at the moment, but as soon as we identify that he was working at Bundaberg at that time, I intend to lift that suppression order, unless anyone wants to make any submissions to the contrary?

MR DEVLIN: Yes, could I be heard on that briefly, Commissioner?

COMMISSIONER: Yes.

MR DEVLIN: I can tell you the file for what I think is the right practitioner is on its way here now and that will be produced to the Commission. The Board's own file would indicate, for that particular practitioner, a period of a couple of months in 2002 at Bundaberg. So it sounds like it is the right one, and that was ascertained over lunchtime as well.

The difficulty with the non-publication order, Commissioner, is this that I raise for your consideration: Dr Jayasekera's evidence on the topic at this stage makes it difficult to identify a patient or a specific procedure, so that his evidence on the topic can be tested.

COMMISSIONER: Well, he identified the procedure.

MR DEVLIN: Yes.

COMMISSIONER: Pretty clearly, I thought.

MR DEVLIN: In terms of the method which has been adopted here in latter months of obtaining patient files and trying to isolate the particular procedure and the other potential eye witnesses for the procedure, such as anaesthetists, nurses, and so on, becomes an impossible task, at least as it appears at the moment, that Dr Jayasekera is unable to assist with any

further particulars, which is understandable. That's all I can really advance on the topic. Otherwise, I will be able to produce the Board's file as soon as it is available to me.

COMMISSIONER: Well, you haven't persuaded me to change my mind on that but we will see what the file reveals. The other matter I want to raise which concerns your client, Mr Freeburn, is that I want to raise in closed session at the end of this witness's evidence this afternoon a matter relating to whether your client should give evidence before this inquiry. You may not be in a position to make submissions on that this afternoon. Even if you are not, I would like to raise it so that you and others will have an opportunity to make submissions on it perhaps tomorrow morning.

MR FREEBURN: Thank you.

DAN BERGIN, CONTINUING EXAMINATION-IN-CHIEF:

COMMISSIONER: Yes, Mr Andrews?

MR ANDREWS: Mr Bergin, at page 14 of your statement, I see that you observe that general surgery and orthopaedics are two of the main specialties in the central zone where long waits occur in the greatest numbers as well as cardiac interventional procedures at the Prince Charles Hospital?-- Yes.

It puts me in mind of one of the attachments to your statement, which I think is attachment 7, and there is within it a - within that very long attachment, there is an appendix which starts on a page numbered 11, and I will put up page 12. Now, on page 11 appears the heading "funding arrangements", on page 12 appears what you see on screen. You will see at item 2, it reads: "Budget surpluses at year end in State operating funding, taking into consideration valid commitments, will be reprovided to the health service districts and Statewide services at the discretion of the office of the Director-General and the zonal managers." Does that mean that if there is a surplus, that a particular hospital really has to rely upon your discretion and the Director-General's as to whether they get to keep a surplus?-- Yes, they would - the districts with a surplus would seek - typically seek for that to be reprovided in the following year, and we would then make recommendation to the Director-General who would make the final decision.

And is the general rule that which is recited in the next sentence, that is "the retention of surpluses in excess of 4 per cent of the total health service district and Statewide services operating budget will require justification by the health service district."?-- Yes.

COMMISSIONER: Does that mean it is unlikely in the usual course of events to be granted?-- Can I say, Commissioner, it is most unlikely that there would ever be a surplus that large.

I see?-- In my experience there never has been.

Right, all right.

MR ANDREWS: And is it a general rule that in the event of a deficit, the overrun "shall be carried forward by the entity and will be absorbed in the allocation for the new financial year"?-- Yes.

Now, that makes a considerable incentive for a district manager, does it not, not to run at a deficit and to do the best he or she can to make at least a small surplus?-- Definitely.

And-----

COMMISSIONER: By being "absorbed in the allocations of new am year" means that the allocation for the new financial year will be effectively reduced by that deficit?-- Exactly, Commissioner.

Yes.

MR ANDREWS: And so where you, at page 14 of your statement, speak of general surgery as being "one of the two main specialties in the central zone where long waits occur in the greatest numbers", does that mean that in general surgery there is the opportunity to seek to reduce the elective surgery with an opportunity to increase your budget surplus or an opportunity to strive for a budget surplus?-- I am not sure I understand your question, counsel, sorry.

In general surgery there is elective surgery, is there not?-- Yes.

And in 2003 and 2004, was there an incentive provided for - for the performance of elective surgery which had to do with the complexity of the surgery, called weighted separations?-- Yes.

So that one might tally the amount of weighted separations done in a period, and if a hospital such as Bundaberg's did a lot of weighted separations in the period, it might get an incentive, a financial one?-- It is true that weighted separations are the currency, if you like, by which the activity in elective surgery is measured and funded. There is - funding is calculated on the basis of a price her weighted separation, and it is also true that the more complex surgery contains a greater weight which means it gets funded. I have great difficulty, though, thinking this would ever be an incentive alone for hospitals to do more complex surgery because, of course, there is also the cost of doing that surgery. In fact, at a place like Bundaberg, I would believe

that because of the low numbers of complex procedures that they would do compared to, say, the bigger metropolitan hospitals, that their costs per unit would be higher because they don't have the economies of scale of the bigger places. So I have always found this argument that there was somehow some financial incentive to do more complex surgery at a place like Bundaberg, I couldn't understand what rationale there might be behind that, for those reasons.

I see. Well, putting aside for the moment complex surgery, such as oesophagectomies and Whipple's procedures which I imagine would tally a large number of weighted separations-----?-- Yes.

-----per procedure?-- Yes.

There would be an incentive, wouldn't there, to encourage a surgeon to remain if that surgeon had a high level of even simple procedures; that is, if the surgeon was more productive in terms of numbers than another, the more productive one would be encouraged to remain?-- Certainly in terms of the elective surgery program, I believe a productive surgeon would be highly valued, in terms of the throughput given the same amount of resource. Having said all of that, though, I think that whatever he does - he or she does, would still need to be within the bounds of his and the hospital's capacity.

COMMISSIONER: That's ideally so, of course, but that may not in practice occur. The economic incentive is in favour of a doctor who is more productive?-- Theoretically I would agree with you, Commissioner. I must say, though, I have never heard, in all my experience, those sorts of rationales being, you know, touted or discussed. It is just totally foreign to what my experience has been.

Well, we have heard of them with respect to Bundaberg and Dr Patel?-- I have heard the allegations but I must say that I haven't heard of it anywhere else.

All right.

MR ANDREWS: One consequence of the elective surgery incentives is that a hospital at which more procedures - more elected procedures are performed will be more greatly rewarded than the hospital at which fewer elective procedures are performed?-- That is true, up to the part that the district has for the elective surgery funds they are given, so there is no guarantee of additional funding once the district reaches its elective surgery target.

How did Bundaberg perform at reaching its elective surgery target, for instance, in the year prior to Dr Patel's arrival? Do you know whether it did?-- I can't say for certain.

And a consequence of a system of giving a financial reward for the currency of weighted separations from elective surgery is that you get a financial reward for weighted separations irrespective of whether the outcome for the patient might be regarded as a good one or a poor one?-- Certainly the outcome for the patient isn't taken into consideration in the funding.

You would hope that it's take into consideration by the clinicians and the hospital?-- Absolutely.

Mr Messenger, Member of Parliament, made a number of speeches from about the 18th of March 2004 in Parliament in which the topic of the Bundaberg Base Hospital was raised. Were you aware of that?-- I can't recall the specific dates, but I am, of course, aware of Mr Messenger's comments about the hospital at various times.

Well, as I understand from a summary which appears in Mr Messenger's statement tendered in evidence, it seems that on the 21st of April - I beg your pardon, on the 18th of March 2004 in a maiden speech Mr Messenger raised the issues of bullying, unsafe working conditions, understaffing and overworked staff with respect to the Bundaberg Base Hospital and the Bundaberg and District Health Services. Now, subject to not remembering the date, do you recall that topics similar to those became aired in public?-- Yes.

You'd have discussed them with Mr Leck surely?-- I can't recall specific discussions with Peter Leck about Mr Messenger's allegations. I believe - I am almost certain that there were briefs prepared by Mr Leck.

COMMISSIONER: To you?-- Well, that would have come through to the Minister and that I would have seen-----

I see?-- -----in relation to those allegations, but once again I can't be absolutely sure.

MR ANDREWS: It seems that on about the 21st of April 2004 Mr Messenger made another speech in Parliament about the Bundaberg and District Health Service saying it was - I am paraphrasing - in deep crisis and he spoke of work standards, low staff morale, health professionals being bullied, intimidated and vilified by Queensland Health management, waiting list blow-outs, patients being prematurely discharged,

and he called for a full open inquiry into the management and operation of the Bundaberg and District Health Service. Now, that's a matter that would have come to your attention, I feel certain?-- Yes.

Did you discuss these matters with Mr Leck?-- Once again, I can't remember specific discussions that I had with him about those matters.

COMMISSIONER: Can I just ask you to pause there. If you had a specific discussion with Mr Leck about those matters, would you have diarised it? Would you have a made a note in your diary about the date of your discussion and what was said?-- No. I wasn't in the habit of making - I mean, I have never really diarised discussions that I have with people.

All right.

MR ANDREWS: Now, they are important matters from the perspective of a zonal manager, aren't they?-- Yes.

They'd have been matters about which you'd have wanted to discuss - to have discussions with Mr Leck, surely?-- And I would agree with you. I am just struggling to recall specific discussions that I had with him about those matters.

Well, an allegation, for instance, in about April of 2004 that health professionals were being bullied, intimidated and vilified by Queensland Health management, now, I imagine that if that was the first time ever that you'd heard an allegation of that kind you'd have sprung into action?-- I was aware of Mr Messenger making allegations, for example, about the Mental Health Service in regards to some of those issues, and-----

In fact, it does seem that there were some speeches which touched upon the Mental Health Service as a discrete topic?-- Yes.

I haven't raised those?-- Oh, okay. And I can remember correspondence going back to Mr Messenger that had been developed by the district that came to me and that I would have reviewed that and then that would have gone out under the Minister or the Director-General's signature in relation to those issues. So, those issues were considered and responded to Mr Messenger.

Did you try to get to the bottom of the allegations that health professionals were being bullied, intimidated and vilified? Did you try to find out who that professional was?-- I can't recall whether we in fact asked Mr Messenger in the correspondence for some details, because obviously that level of allegation, I guess, needs a bit more specifics to it to really investigate it.

COMMISSIONER: Did you go to Mr Leck or Dr Keating to see if those specifics could be obtained?-- I - once again, Commissioner, I can't recall any specific discussions that I

had with Mr Leck in relation-----

These are very important matters. One would think that if you had any discussions you'd have remembered them?-- Possibly, although it is 18 months ago and, I must confess, my memory isn't - isn't as sharp as I'd like it to be. Obviously I'd need to review some of the correspondence in relation to those matters to see what actually in fact occurred.

MR ANDREWS: On the 13th of May 2004 - I mentioned a synopsis of two speeches. The fourth speech to be made between the 18th of March and the 13th of May called for a full and comprehensive independent investigation into the entire Bundaberg and District Health Service, not just the Mental Health Unit?-- Mmm.

It seems that Mr Messenger's sources at least had allegations of a serious kind. Did you explore them any further with Mr Leck?-- Once again, I can't recall specific discussions that I had with him about those matters. I can recall that the Director-General's office was involved in and at some stage took the decision to have an independent investigation of the Mental Health Unit, which was subsequently undertaken.

On the 19th of August 2004 in a speech Mr Messenger raised the issue of anaesthetists at the Bundaberg Base Hospital averaging 80 hour weeks and his concerns of fatigue. Do you recall that issue being the subject of any discussions between you and Mr Leck or anyone else at the Bundaberg Base Hospital?-- No, I can't. I can't recall that.

Is that an issue with which you would ordinarily concern yourself?-- It would certainly - yes, it would, and it would certainly be an issue where we would call for a brief from the district to respond to those allegations and then consider the response and - but I can't, once again, until I look through the files and see whether, in fact, that occurred, I couldn't absolutely say that that occurred.

And the allegation that anaesthetists were working 80 hour weeks, we hear about enormous hours that medical practitioners work. Is an 80 hour week for an anaesthetist something that would concern you?-- I think an 80 hour week for anyone would be of some concern and I think would need to be looked at in terms of whether it was safe - I guess it would depend on an assessment of how onerous the duties were during that 80 hour period, the nature of the work being undertaken. I guess at the end of the day there's no set standard in terms of what's safe and what's not safe.

Well, did you instruct anyone to undertake such an assessment?-- I can't - I can't recall.

On the 1st of September 2004 in a speech dealing with a number of matters, Mr Messenger raised a claim that doctors were working 72, 48 and 24 hours straight at the Bundaberg Base Hospital. 24 hours seems alarming?-- Mmm.

48 and 72 seem extraordinary. Do you recall that issue being raised?-- I don't recall that issue coming up. 1

Had it been raised, is it a matter you'd have discussed with Mr Leck in one of your three or so communications per fortnight?-- It would have been something that I would have asked Mr Leck to provide a brief on, a response to.

I have no further questions, Commissioner.

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COMMISSIONER: Thank you. Who is going first?

MR APPLEGARTH: It is agreed I will go first.

COMMISSIONER: Yes, Mr Applegarth?

MR APPLEGARTH: If that suit-----

COMMISSIONER: Whatever you agree on.

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CROSS-EXAMINATION:

MR APPLEGARTH: Mr Bergin, my name is Applegarth. I appear for Dr Buckland. Now, you have been either an acting zonal manager or the zonal manager of the Central Zone since January 2001?-- That's correct.

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And before that you had five years experience as a District Manager?-- That's correct.

Approximately five years?-- Yes.

During that time you have had substantial dealings in relation to the funding and administration of elective surgery?-- Yes.

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And as zonal manager, you have been at the interface between the hospitals and the practitioners who carry out elective surgery and the corporate office that funds it?-- Yes.

And one of your jobs as zonal manager has been to report to and explain to people in head office about how the elective surgery program operates on the ground, as it were?-- Yes.

Looking back at that period of nearly 10 years that you have either been a zonal manager or district manager, how would you describe the relationship between the hospitals that undertake elective surgery and the Surgical Access Team that until recently controlled elective surgery funding?-- I think it could be described as one of some tension and conflict or disagreement in relation to a number of matters.

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And can you just in terms of - outline what those matters are?-- I guess the process for establishing elective surgery targets in terms of activity targets, disagreement over the

business rules under which the program operated, the complexity of the program, the complexity - unnecessary complexity perhaps as many districts viewed it in terms of the administration of the program.

Thank you. In terms of those matters, if I can try and work through them, in terms of targets was it the case that the Surgical Access Team was effectively in the business of purchasing services from the districts at set prices, as it were, for what it would pay for the services?-- That's correct, and if I can go on, the - certainly the view of some districts was that those prices were inadequate in some respects to cover the costs of some of those procedures. For example, I can recall hip and knee replacements were a particular issue where it was widely considered by districts that the funding of those procedures was inadequate and, therefore, there was actually a disincentive to undertake those procedures.

Now, is it the case that the Surgical Access Team provided a or created a system of incentives and penalties to make hospitals perform as many elective surgery cases as possible?-- Sorry, can you repeat that question?

Was it the case that the program that was established over the years by the Surgical Access Team sought to create a system of incentives and penalties for hospitals to perform as many elective surgery cases as possible?-- That's correct.

And was the form of penalty that if you didn't do the number of surgery cases that they hoped you'd do, that the funding would be clawed back?-- Yes.

Sorry?-- That's correct. If you didn't meet your target, your elective surgery target, then some of the funding that had been allocated for the target would be clawed back or withheld, as the case maybe, if it hadn't been fully allocated.

The target was on surgery rather than elective procedures?-- The target in the early days was purely elective surgery.

And that - procedures like stents, defibrillators and the like fell outside of the definition of surgery?-- That's exactly right, yes. That was, I suppose, another issue of contention, that there was a view, which I certainly agreed with, that the program mitigated against undertaking what could be called best practice.

Yes?-- So, in other words, it was clinically more desirable to undertake some of these procedures, such as you have just mentioned, but there was no means of financing those. However, there was for the surgical alternative, which sometimes wouldn't be the preferred course of action for the patient.

You mentioned that the system or the funding when it was very complex, and so is it the case that during your time as

District Manager and then zonal manager that it was your experience that the procedures and models were complex in the sense of, what, being very administratively complex?-- Yes. There were - there was a very large number of funding pools - I forget how many - but there could have been a half-a-dozen which just - was just - made the whole thing very complex in terms of trying to report to it and to manage it.

And this would have to be managed at a district level by hospital administrators?-- The district - yeah, the districts would have to report against that large number of funding pools which of course made the task in the view of many unnecessarily complex.

Now, the hospitals, the front line, they would be required to input data, wouldn't they, in terms of Commonwealth reporting requirements and Queensland admission data collection requirements?-- Yes.

To have the system whereby one can identify patients and what procedures they went through and where they came into the hospital and the like?-- Yes.

Is that the case?-- Yes.

And it was that data that was used in part to determine funding?-- Yes.

Now, you mentioned a second ago the business rules. Is it the case that over the years there have been ongoing disputes between the hospitals and the Surgical Access Team about the formulation and interpretation of elective surgery business rules?-- Yes.

And the complaints from the districts was that they weren't consulted about the content of those rules, the rules were promulgated by the Surgical Access Team without much input from the districts as to what they meant and how clear they were?-- That was one of the complaints, yes.

What was the other complaint, about interpretation?-- Well, that they disagreed with some of the rules.

And that is - when you say they disagreed with the rules, but does that mean they disagree with the way they have been administered or disagree with what they said?-- Well, for instance, the matters that you raised before about the inclusion or otherwise of some nonsurgical procedures, the districts disagreed with something which in fact didn't give an incentive to provide best practice.

Now, can I take you to a topic which relates to the classification and reclassification of patients as elective surgery patients?-- Yes.

Was that an area of dispute between the districts and the Surgical Access Team in terms of how the business rules should be applied?-- Yes, very definitely.

And to your recollection, has that been something of a perennial area of despite between the hospitals and the Surgical Access Team over the years?-- Yes. For a number of years the assertion was made that patients who the Surgical Access Service believed should have been treated as emergency patients had been categorised as elective patients and, therefore, could get funding under the elective surgery program.

Was the point of view, as you understood it, put by the manager of the Surgical Access Team that the way the business rules applied was that if someone came into the hospital, as it were, through the Emergency department, that they shouldn't qualify for funding if they then went on to have an elective surgery procedure?-- Yes, I believe that's right.

And did he put his views in writing from time to time? Were there meetings?-- I - I can't - excuse me. I can't recall anything in writing from him, but I was aware that he and some people in the elective surgery - Surgical Access Service felt that that was occurring.

And I take it from what you have said that the view amongst the districts was that that wasn't the proper way this business rule should be interpreted and applied?-- Certainly the districts argued a case quite persuasively, as I recall it, that you could have a patient who initially came through the emergency department but still fell within the rules that apply for what could be categorised as elective surgery, and, in fact, there was some submissions that were made in that respect.

Look, well, I'd ask you to look at this document. Here's one for you, here's one for the Commissioner, and here's one to go up on the monitor here. Now, Mr Bergin, do you recognise that to be a briefing of the General Manager, Health Services that you cleared in late September 2003?-- Yes.

You sought advice from people within your zone about this issue of classification and what's called retrospective reclassification?-- Yes.

And this briefing was prepared by people in the zone in consultation with what appears to be a number of District Managers?-- Yes.

Now, just ignore the handwriting on the front to start with and I will just want to take us as briefly as I can through this document. It identifies the type of issues you just discussed about the business rules and what the definition of the elective surgery is. You see that in the, "Background" section?-- Yes.

And then it discusses some key issues and said, "There are circumstances where this classification or retrospective reclassification is appropriate.", and it then dealt with them?-- Yes.

And just as, for example, last dot point on the page, that after someone comes into the emergency section and after stabilisation, observation, they are deemed to be elective patients and are scheduled for surgery and they are going for elective surgery?-- Yes.

Or that over the page, they have to await surgery because their decision is made that it would be inappropriate to send them home or the distance to send them home and come back and so forth?-- Yes.

The next dot point - the next dot point, there's some emergency wards that actually operate as what's described as a transit lounge or admission portal. Do you see that on the second last dot point?-- Yes.

And, finally, that there had actually been people from the Surgical Access Team working with people in the districts trying to get the classification process right and that had led to changes in the pattern of classification and reclassification?-- Yes.

Now, those points that were made to you in that submission that you cleared, they accord with your own experience in how the system operated on the ground?-- Yes, I believe so.

In any case, the purpose of this was to brief the General Manager, Health Service, who at the time was Dr Buckland?-- Yes.

And if you turn back to the first page, do you recognise the handwriting on the front down the bottom? Dr Buckland's handwriting?-- Yes.

The initial B is his, and Glen Cuffe, Dr Glen Cuffe who was the line manager above Mr Walker, the Surgical Access Team?-- Yes, that's right.

And the - doing my best to read a doctor's handwriting, it says to Glen Cuffe, "Does the assertion of business rules which do not include source of referral codes have substance? If it is true, then SAS have no legitimate call. Advise please."?-- Yes.

Is that how you read it?-- Yes.

Just finally, I draw your - drew your attention before to the fact that it was reported to you that people from the Surgical Access Team worked with people in the hospitals in terms of the classification process. Is that your recollection?-- Sorry, could you repeat that?

One of the dot points was that some of the changes in terms of practices of classification and reclassification had occurred and that people in the districts had been working with SAS in relation to this. Is it your recollection that at least some people from the Surgical Access Team went out and dealt

directly with the people in the districts and tried to explain to them how the system operated?-- Yes, that's correct, and there were from time the time some districts that actively sought that assistance from the Surgical Access Service.

Do you remember particularly who - which office or officers of Surgical Access Team provided that?-- I can.

-----assistance?-- I can remember one officer, Mr Michael Zanco, who did fulfil that role quite frequently.

And have you had dealings with Mr Zanco?-- Yes.

What is your opinion of his skills in this type of area?-- He's very knowledgeable in relation to the whole area and very helpful to the districts who participated in the program in terms of assisting them with, I guess, the management of the elective surgery program and assisting them with their progress.

I have no further questions, thank you, Mr Commissioner.

COMMISSIONER: Yes.

MR ANDREWS: Excuse me, Commissioner. It's been brought to my attention that there was some significant matters I forgot to ask Mr Bergin about. I don't think any of them will be likely to affect Mr Applegarth's client.

COMMISSIONER: No.

MR ANDREWS: But they may affect some of the other persons.

COMMISSIONER: Perhaps-----

MR ANDREWS: It is a question of whether I should ask them first.

COMMISSIONER: Yes, I think you should.

MR APPLEGARTH: I am sorry, Commissioner. Sorry to interrupt the Court. I should have tendered that last document, I think.

COMMISSIONER: Yes. All right. That will be Exhibit number 384.

ADMITTED AND MARKED "EXHIBIT 384"

FURTHER EXAMINATION-IN-CHIEF:

MR ANDREWS: Mr Bergin, I understand that on the 15th of April 2005 while you were in Bundaberg you found evidence of complaints concerning Dr Patel in a folder; is that correct?-- Yes, I recall that.

Would you have a look, please, at attachment GF19 to a statement of Dr FitzGerald and tell me if you recognise the contents as the documents that you handed to Dr FitzGerald - I beg your pardon, as the documents that you found in the file?-- I'm sorry, I can't - I can't recall the particular documents. I recall that there were three I think, three complaints that I found in addition to the statement by Toni Hoffman, or the complaint by Toni Hoffman.

Thank you. Did you look at them at the time?-- Just - look, I can't recall whether I looked at them in any detail. At the time they were being chased by the review team I believe, so I passed them - as I recall it, I passed them to the review team.

To Dr FitzGerald?-- No, sorry, to Dr Mattiussi's review team.

I see. Do you recall whether you looked at them sufficiently to make a determination about whether they were matters that you would wish to have been apprised of by Mr Leck?-- I must admit, I didn't think about them in that light. When I became aware that they were complaints in relation to Dr Patel, and I don't know whether I read in Dr FitzGerald's report there had only been one - I read that there had been a certain number and here were more.

COMMISSIONER: That would have alarmed you, wouldn't it?-- Well, certainly, it seemed that these had not been produced for I presume Dr FitzGerald's review.

Or Dr FitzGerald omitted to mention them?-- Yes, I guess so. So they seemed - I can recall at the time that these hadn't been commented on or covered-----

Yes?-- -----somewhere.

Mmm.

MR ANDREWS: I'd ask you to comment on this proposition: "On 15 April 2005 Mr Dan Bergin, Central Zone Manager, while in Bundaberg found evidence of complaints concerning Dr Patel in a folder, attachment GF19, and faxed these down to my office via Mr Graham Kerridge, manager of the Central Zone Management Unit?-- Yes, that's-----

And this was after Dr FitzGerald's report had been completed?-- Yes.

COMMISSIONER: Sorry, what date was that?

MR ANDREWS: Dr FitzGerald deposed that on the 15th of April 2005, Mr Dan Bergin did those things.

COMMISSIONER: Mmm.

MR ANDREWS: With respect to VMOs, there was evidence given by Dr Miach in a statement that - to the effect that Dr Keating had only offered Dr Thiele one VMO session every two or three months. How did that affect you when you read it?-- Well, I - I was disappointed that the matter seemed to have been dealt with that way and that there hadn't been a funding bid subsequently put in to me to allow some private outsourcing of the venous access surgery.

This was to do with venous access surgery, which involved the insertion of catheters?-- Yes. And there had been - just to explain further, there had been a meeting at Hervey Bay Hospital with myself, Dr Miach, the District Manager for Fraser Coast with Peter Leck and I think Darren Keating booked in by teleconference where it was agreed that that would go ahead, that arrangement, and that people would come back - the districts would come back to me with a funding bid and then we would look at funding that through some election commitment funding that was available for venous access surgery.

Thank you.

COMMISSIONER: Did you - when you were concerned about that, did you raise the matter then with Mr Leck?-- I only discovered that during the course of the previous Commission's hearings.

Oh, I see.

MR ANDREWS: A Dr Aroney has given evidence about a meeting or meetings at which you are alleged to have been an attendee. I will put up on the screen what Dr Aroney's statement says of the first of them. The statement doesn't identify the date of that meeting with any greater particularity?-- Yes.

Except that further on in the statement Dr Aroney does say at a later meeting held on Queensland Day in June 2003 certain things happened. So this appears to be a meeting said to precede Queensland day in June?-- Yes.

Do you recall a meeting in which a topic such as this was put to you by Dr Aroney?-- Yes.

And, indeed, I think in your statement you have described interventional cardiac surgery as one of the three-----?-- Yes.

-----significant waiting list problems in your zone?-- Yes.

Now, it's suggested that you stated that the Cardiac Society - can you turn the page, please. "The Cardiac Society should not have been present at the staff meeting"?-- No,

I - I refute that. In fact, what happened was I was invited to a meeting of the medical staff at the Prince Charles Hospital. They provided a presentation to me and as well as the full audience of what was happening with cardiac services in Queensland and particularly at the Prince Charles Hospital. I then gave a presentation where I outlined that a decision had been made, not by me but by either the Director-General or the General Manager Health Services at the time, to transfer roughly 300 cardiac surgery cases from Prince Charles to the PA. I explained what the rationale was, which was to make the service at the PA Hospital more sustainable, to build up a greater volume of work and also to provide a service which was more accessible for the people living on the south side of Brisbane. Those people previously would have gone to the Prince Charles Hospital. So there was roughly the equivalent of about 300 cardiac surgery cases from the outside being done at the Prince Charles that could have been done at the PA. I explained that there would be a process involving the clinicians and managers from both hospitals to sit down and look at how to make that work and, particularly, not to do any damage to the service at Prince Charles because I said I'm responsible for the central zone, the last thing I want to - what I will be making sure of as far as I could is that there would be no damage done to the service there in that transfer.

Is it fair to say that the clinicians were antagonistic?-- It is fair to say that the - delivering that sort of message to that group was not the most desirable thing that you'd ever want to do.

Did they want to shoot the messenger?-- Very much so.

But did you have an opinion yourself about these things?-- Yes, I did. I felt that we brought ourselves a lot of grief in the way in which it was done, which was totally unnecessary. That-----

COMMISSIONER: What about the doing of it altogether, Mr Bergin?-- Commissioner, I think the doing of it was - it was a good idea to build up the service at PA and it was a good idea to provide a more accessible service for the people living on the south side of Brisbane.

But isn't there some advantage in - where it is a service which requires considerable expertise, to have it concentrated in one place?-- Well, that's a question probably best answered by clinicians but-----

Well, aren't you - that's the question I suppose and maybe you can't answer it, but aren't you diluting the quality of the service by separating it into two separate establishments like that, or taking that risk anyway?-- Well, I understand that the service at PA is good quality service and that Brisbane - all the - all the indications that I receive is that Brisbane can sustain two cardiac surgery services. Having said that, there are some very high level cardiac services that will always remain at Prince Charles. So Prince

Charles will continue to provide those very high level services.

Right?-- But there is a certain level of service that can be provided at PA. Townsville also offers a certain level of service. Gold Coast will soon have a cardiac catheter service.

MR ANDREWS: Now, you've said that the decision about whether it was or was not appropriate to dilute the service at the Prince Charles Hospital was really a matter best answered by clinicians. Now, you were confronted by an angry group of clinicians who were opposed to the splitting of services and the dilution of the services at Prince Charles for the increasing of services at the Princess Alexandra Hospital. Who were the clinicians who were in favour of that move?-- Well, they didn't present themselves on that day.

Do you know who they were?-- Look, I don't know that any clinicians were supportive of the way in which it was done.

COMMISSIONER: No, no, the fact that it was done?-- There were no clinicians that I was aware of that were in favour of it.

Right. Well, it was a decision obviously made by administrators without reference to clinicians; is that correct?-- It was certainly - well, I don't know who my superiors, for example, discussed with before they made that decision, but can I say just in respect of my comment earlier that I thought we brought ourselves a lot of grief, subsequently the ironic thing was that in fact the funding for Prince Charles was increased to virtually offset the funding that was transferred to PA to allow this transfer of activity to occur, and I mean in a space of 12 months, over the next 12 months. And, overall, when you look at the cardiac activity at Prince Charles, PA and Royal Brisbane for that matter, because they do some non-cardiac surgery activity, cardiac activity, the overall activity increased quite significantly; it was just redistributed somewhat. But it - all this could have been accomplished in my view without the sort of angst that we got and the concerns expressed by clinicians if we'd simply bumped up the service at PA financially and then redirected those patients from the southern part of Brisbane to PA, which was more convenient and appropriate for them, and left Prince Charles with their funding to cope with the increase that came their way anyway from other sources.

MR ANDREWS: But it seems that Prince Charles's funding was cut at least temporarily?-- Temporarily. But when you look at, as I say, over a period of 12 months or so after, I think they went down in angiographies but overall the three hospitals, the cardiac activity across the three hospitals went up. Can I just say that in response to the comment you made before about the presence of the Cardiac Society-----

Yes?-- -----I deny saying that they shouldn't have been

present. When Dr Aroney, and I didn't know who Dr Aroney was, when he got up and asked the question and said he was from the Cardiac Society - in fact, I thought he said he was from the Heart Foundation but, anyway, I indicated that I was surprised. I deny that I gave an angry reaction. I indicated my surprise and I was surprised that anyone other than staff were there because when he said he was from the Cardiac Society, I assumed that he was a non-staff member. He then identified himself as a member of staff.

Now, there's another meeting about which Dr Aroney gave some evidence and it seems to have been on the 8th of January 2004, on the evening of that day. It's said to have been a meeting attended by Dr Aroney, Dr Scott, you and a Dr Andrew Galbraith, another cardiologist. Among other things said in it is a suggestion that Dr Scott said, "Your letter to the Premier" - speaking to Dr Aroney, "Your letter to the Premier was offensive to Queensland Health and personally offensive to me. You made a lot of cheap shots." Dr Aroney's alleged to have replied, "I don't consider unnecessary deaths as cheap shots. You might." Dr Scott says, "We're going to investigate the three deaths you mentioned." But in the course of - now, do you remember a conversation touching upon such things?-- Yes.

In the course of it Dr Aroney alleged that Dr Scott had said, "You come after us with more shots and we'll come after you." Now, it was later alleged by Dr Aroney that amounted to bullying and you were asked at a press conference by Dr Aroney to confirm that Dr Scott had bullied him. Do you remember that?-- Absolutely not.

No, do you remember being asked at the press conference to confirm it?-- I was never at a press conference.

I see?-- I've seen those assertions by Dr Aroney and I have no idea where he gets them from. I was never at any press conference associated with this matter.

Thank you. I have no further questions, Commissioner.

COMMISSIONER: Thank you.

COMMISSIONER: Well, first I'll ask Mr Applegarth. Do you have any questions arising out of that?

MR APPLEGARTH: Certainly not.

COMMISSIONER: No.

MR DEVLIN: I have some questions.

COMMISSIONER: Okay. Yes.

MR MULLINS: Thank you.

CROSS-EXAMINATION:

MR MULLINS: Mr Bergin, my name is Mullins. I appear on behalf of the patients. Firstly, you mentioned the feedback that you get from the District Managers includes weekly significant issues reports. That's correct?-- Yes.

Do they take a particular format?-- They do, yes.

What types of material - firstly, is there a direction about what is a significant issue?-- I suppose essentially - well, it's - it's a matter of judgment for them. However, I guess it's been explained in the past that anything that might come up for example in the media in particular, any - anything that might be an unpleasant surprise for the Minister, something like that.

Is there any guideline, written guideline, as to what is a significant issue?-- I'm not aware of that off the top of my head, no.

Would it include a sentinel event?-- No, it wouldn't because they're separately reported. But when - it wouldn't ordinarily but it would depend upon what attention or what issues were associated with that sentinel event.

You state at page 7 of your statement that you'd only received notice of one sentinel event?-- Yep.

And that was the unexpected death of a patient of the mental health service at Bundaberg?-- Yes.

The Woodruff report mentions the reporting of a sentinel event by Ms Hoffman on 2 August 2004 in respect of the death of Mr Bramich?-- Right.

Would you know anything about that at all?-- Not that I can recall.

Can you recollect whether that was part of a significant issue to report?-- No, I certainly can't.

I'll read you a passage at page 35 of the report: "On 20 September 2004 Bundaberg Hospital received a ministerial complaint about the Mr Bramich case. Under section 9A PIPA notice was also served on Queensland Health." Did you know anything about those sort two events?-- No, no.

At attachment 2, which Mr Andrews took you to, you referred to the briefing note that Mr Leck gave you on about 2 February 2005?-- Yes.

And you made a statement to the Commission that you were a little annoyed that you didn't know about some of these events?-- Yes. Well, sorry, I was annoyed that the Chief Health Officer had been commissioned to undertake a review

without my being told of these issues.

I just want to clarify what it was that you were annoyed about not knowing. Was it the case that several nurses had made complaints in writing; you were annoyed about not knowing about that?-- Well, I wasn't aware of that at that stage. I was reflecting on the fact that there appeared to be some organisation of this review and the DM hadn't - hadn't let me know that this had been arranged.

Well, do you consider that the District Manager should have advised you about the nurses' complaints?-- Yes. I mean, if there were - if there were complaints about someone's clinical practice such that there were, you know, sufficient concerns to have them independently expertly investigated, then, certainly, I would have expected to be told about that.

The third dot point was that the Director of Surgery had indicated that he planned to cease his contract with the Bundaberg Hospital at the end of the financial year. Was that an issue that you considered you should have been advised about as a significant issue?-- No, not - I don't see why.

Some of the nursing staff had advised the Queensland Nurses Union of their concerns. Was that a significant issue you should have known about?-- I would - yeah, I guess so, yes.

Now, you also say at paragraph 5 page 4 in response to a question about the appointment of Dr Patel and his employment that - effectively you say the appointment and employment of Dr Patel is within the HR delegation of the district to deal with. That's correct?-- Sorry?

The appointment and employment of Dr Patel is within the jurisdiction of the HR delegation of the district?-- Yes.

That you add that, "These matters are never referred to me unless the District Manager is part of the selection panel "?-- Yes.

Are you saying that if the District Manager does form part of the selection panel, then he is to refer the matter to you before the selection is made?-- No, what I'm saying is that I would need to sign off on the appointment on the basis of what we call the one-up - the one-up rule. So, in other words, given that the District Manager was part of the selection process, he can't independently sign off on the appointment. That would need to go - to go to a level above him, and I - I would think it is probably unusual that a District Manager could be involved in a - in a clinical appointment. That would usually be chaired by the Medical Superintendent. So the District Manager, I think, would usually sign off on the basis that he wasn't part of the selection panel process.

We have heard from a Dr Jayasekera this morning who said at least the interview process through which he went through was conducted by a surgeon, the District Manager and the Director of Medical Services. Would you sign off on that

appointment?-- You're asking me in terms of whether I've felt the composition of the panel was appropriate?

No, I'm asking you - as I understand it, you say the reason why the referral would be to you is if the District Manager is part of the selection panel in the instance that Dr Jayasekera described, the District Manager was part of the selection panel?-- Well, that should be referred to me given that the District Manager was part of the selection panel process.

You also annex the service agreement for the Bundaberg Hospital for the years 2004 and 2005 at attachment - the number is obliterated but I think it is 6C - sorry, attachment 7?-- Yes.

And that includes the requirement that you've identified for credentialing and privileging?-- Yes.

And that agreement appears to be signed off by Mr Leck?-- Yes.

Yourself and the Senior Executive Director of Health Services?-- Well, it's got his signature block. It doesn't actually have his signature.

Would there exist service agreements for 2003/2004?-- Yes.

How far back did the service agreements go?-- I believe the service agreements were brought in in about 1998, so they should go back as far as that.

And where are the service agreements kept?-- They certainly are - the Central Zone Management Unit would have them going back to when it was formed in 1999. So we would have - the central zone unit would have most of them.

Are you able to say there were similar obligations going back 2002, 2003 and so on in respect of credentialing and privileging that I had identified in this document?-- I can't recall.

Are you familiar with the measured quality hospital reports?-- Yes.

That's a document that you would have reference to for interpretation?-- Yes.

Can I show you some extracts from JEC21? First is Measured Quality Hospital Report System, Integration and Change 2003. Can I just show the heading of the page first? Can you recognise that sheet?-- Yeah, I can recognise it, yeah.

That forms part of the Bundaberg Hospital report of 2003, and that is for the year ended 30 June 2002, would that be right?-- Yeah. Well, if this came out on the 1st of July 2003, roughly?

I think there is some debate about when it actually - when you say came out?-- It covers the year before, so in other words a report that came out on the 1st of July - roughly 1st of July 2003 would cover the period '01/'02.

That's right. So this would cover until 30 June 2002, if it was the 2003 report?-- Yes, yes.

Now, how do I read the line "credentialing"? What does that mean? Can I put it another way: you start with credentialing. What does the "SIC02" mean, do you know?-- No, I don't know.

It says under the heading "current", along the top line indicator, it says "yes". Does that mean yes, there is a credentialing system in place?-- I am not certain.

The next line previous "N/R", does that mean "not reported"?-- Once again I am not certain.

Are you familiar enough with these reports to give evidence about it?-- I would have to say I am not familiar with the entirety of the reports. I am more familiar with some parts than others. I suppose particularly the - dealing with outliers in relation to clinical outcomes, et cetera.

You would have reference to these reports yourself to assess the quality of services being provided by a particular health service within your zone?-- Yes, I do have access to them, yes.

Have a look at the 2004 report. It is the same page but it seems that the form of reporting on this issue has changed a little. We can see that for the first column, which is the year ended 30 June 2003, that the credentials and clinical privileges appears to have a process in place, is that right?-- Yes.

And, in fact, we can confirm that, can't we, by looking at the peer group and State medians, 13 out of 13. It appears the process in place across the peer group?-- Yes.

The next line "medical staff reviewed by the committee", again we have the N/R for Bundaberg which suggests not reported, not recorded?-- That's probably a reasonable assumption.

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All right. We might be able to ask Mr Collins about that, thank you. Your evidence is you had no knowledge whatsoever that the credentialing and privileging system or process was not being used in Bundaberg until November 2004?-- Yes.

One final matter arising out of the Woodruff report I would like to ask you about deals with some of the matters raised in that report. Have you read it, the Woodruff report?-- I have read part - I have read parts of it. I wouldn't say I am totally familiar with it.

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The section on credentialing and privileging raises some issues at an organisational level and at an individual level in respect of the Bundaberg Base Hospital. Can you recollect that?-- Not really.

This is one of the comments I am referring to, page 42, the second last dot point: "There is no Queensland Health orientation process for executives, particularly for interstate appointments. This leads to a situation where executives are often unfamiliar with organisational legislation, policy, procedure, and practice. And further, they often lack the necessary networks and contacts to ensure compliance with requirements." Now, in your experience in your zone, are there executives, whether they be district managers or directors of medical services, who are unfamiliar with the legislation they are required to administer?-- I would have to say yes. I've come across instances of people being unfamiliar with legislation, whether they are from elsewhere or within the system.

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In your experience are you aware of executives who are unfamiliar with Queensland Health policy in respect of matters they are required to administer?-- From time to time, yes.

What do you do in your position, as the zonal manager, to ensure that new people coming into the hospital system at an executive level are fully apprised of their obligations, both under Queensland Health policy and legislation?-- There is really no system that I am aware of where we provide an orientation program to people coming into the system, apart from the orientation programs that are provided at a local hospital level - or local district level, and from my recollection of the orientation program that we used to run at the Gold Coast district, some of the matters that you talk to - that you have referred to would be covered in that local district orientation program.

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All right. Well, you say it is handled at a local level?-- Yes.

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If it is not handled there, they simply operate without knowing their relevant legislation and policy requirements?-- Yes, but I would - I would expect that there would be an orientation program locally, at each district.

Thank you, nothing further.

COMMISSIONER: Thank you.

MR ALLEN: Thank you, Commissioner.

COMMISSIONER: Mr Allen?

CROSS-EXAMINATION:

MR ALLEN: Mr Bergin, John Allen for the Queensland Nurses' Union. Page 5 of your report, paragraph 6(d), you answer a query as to what assistance was given by Queensland Health head office to districts in relation to credentialing and privileging?-- Yes.

And it seems that part of that support comes from the central zone management unit?-- Yes.

Was that the system during 2003 and 2004?-- I am not sure whether it goes back as far as 2003. At one stage it was administered completely out of the southern zone management unit for the whole State. It was then devolved to each of the zone units. So each zone unit looked after the rural credentialing and clinical privileging processes - supported those, provided secretariat services to those processes occurring within each of the zones.

But in 2003 it would have been available to the districts, whether it be in the more centralised fashion or in the zone?-- Yes.

And just over the page, paragraph 6(f), the third point you make there is that "Such assistance from the central zone management unit includes assisting the districts to obtain specialist input to their credentialing and clinical processes from metropolitan hospitals"?-- Well, I have said the districts can also access the unit.

Yes. Would that mean that if a Director of Medical Services was facing the difficulty of being unable to obtain a college nominee for a credentialing and privileging committee, that they could seek the assistance of the central zone management unit to find a suitably qualified peer from one of the metropolitan hospitals?-- Certainly that's right. If they didn't have good contacts or assistance coming from the metropolitan hospitals or any other hospital where they might get a specialist, they could contact myself and we would try and arrange that. So, in other words, using, I mean, a bit of leverage from the unit.

And in a practical sense, for example, if one was wanting to find a suitable person to form a credentialing and privileging committee for an applicant for a position such as Dr Patel, that would involve finding a suitably qualified surgeon on the

payroll in another Queensland Health hospital?-- That - I mean, assuming that there weren't any local options that were appropriate, then, yes, that's right.

And, once again, if indeed the central zone management unit was not performing that function in 2003, an identical function would have been performed by the more centralised unit-----?-- That's right.

-----that preceded it?-- Yes. Probably the last bit, in terms of facilitating an access to a metropolitan hospital specialist, would have been a bit more difficult, perhaps, but nevertheless not impossible, in my view.

No. And, indeed, if you were contacted by a Director of Medical Services in your zone who said, "Look, I just can't get a local surgeon or a nominee of the college to sit on this committee, can you help me out?", what would you have done?-- I-----

Let's say in the first half of 2003?-- Yeah, I first of all would have asked whether he'd spoken with one of his colleagues in the metropolitan hospital, such as Royal Brisbane, and if he hadn't I would suggest he did. And if he had any trouble in terms of getting cooperation, then I would have asked him to come back to me. So I would have wanted the relationship built up in the first instance, but if there were problems there, then I would have been happy to step in and talk to the DMS at Royal Brisbane and ask him for assistance with one of the relevant specialists.

If you had become aware that an overseas trained doctor had been appointed as a Director of Surgery at the Bundaberg Base Hospital without being credentialed and privileged and permitted to continue as Director of Surgery without being credentialed and privileged, would you have taken some action?-- Certainly I would have been questioning how that could occur and I would have been talking to the district manager about what could be done to rectify that situation.

Because it would be a serious breach of Queensland Health policy?-- It would be certainly a breach of the credentialing and clinical privileging policy, and obviously, given the circumstances of someone who is credentialed - well, coming from a situation where you didn't know the referees, et cetera, it was a particular risk.

Yes. And the whole basis of the policy is towards patient safety?-- Yes.

So therefore it would be a serious breach which you would take steps to remedy?-- Yes.

COMMISSIONER: Wouldn't you want to ensure that that doctor performed no operations until that process had completed?-- I guess that would depend on the circumstances.

What circumstances?-- Well, for example, if the other

surgeons, who were properly accredited, felt that there were no problems with his surgery-----

Right?-- -----then you might take that into account, because I suppose you have got to look at the flipside, that if you stop someone operating, it means people can't get the surgery.

Yes?-- Now, if you are getting comment from, you know, the other specialist that, "Look, this guy seems quite okay and we're happy with what he is doing", then I would think you would let it go until you urgently did the credentialing process.

And if there are no specialist surgeons in that hospital?-- Well, you would want to get someone, I think, and you would want to get.

If there were no specialist surgeons at that hospital, you would either need to have someone who was a specialist outside the hospital who has seen this man operating and could vouch for his capacity?-- Yes.

Or suspend him from operating until someone could do that?-- Yes.

Right.

MR ALLEN: If I could just take you to once again attachment 3 to your statement?-- Yes.

It is a briefing to yourself from Mr Leck dated the 1st of February 2005?-- Yes.

The subject being the Director of Surgery, Dr Patel?-- Yes.

Now, on the second page under the heading "background", the third dot point is one you were taken to by my learned friend Mr Andrews. "The Director of Surgery has indicated that he plans to cease his contract with the Bundaberg Health Service District at the end of the financial year."?-- Yes.

You understood that Mr Leck was communicating to you that the current agreement between himself and Dr Patel was that he was to continue as the Director of Surgery until at least the 30th of June 2005?-- I suppose I didn't attach any particular significance to that line, and I didn't discuss it, to the best of my recollection, with Peter Leck, but I would assume that the way you interpret that is that he was going to cease at the middle of the year.

Okay. There is no arcane Queensland Health classification of the financial year that's different to the generally understood one?-- No, no.

All right. Now, can I ask you to have a look, please, if it is possible, at Exhibit 72? If we could put that on the overhead projector, it only takes up half a page. Now, I am not suggesting you would have seen this before but you may be

able to make some comment upon it. It is an email from the Director of Medical Services to the nurse unit manager of the operating theatre at Bundaberg Base Hospital, dated the 8th of February 2005. The first line "TMG meeting", that would be a theatre management group meeting?-- I would imagine that, yep.

"At the present time, BHSD"- would be the Bundaberg Health Service District?-- Yep.

"Is 92 weighted separations behind target."?-- Yep.

"The target is achievable. BHSD must achieve the target for many reasons, including financial, over $750,000 per year." Can we just pause there? Can you explain for us how the quantum of that would have been worked out? Does that somehow relate to the 92 weighted separations or is it a more general budget figure?-- It wouldn't - it wouldn't relate to the 92 weighted separations because that - that amount of money would require a lot more weighted separations than 92. I am not sure exactly what that $750,000 represents.

You can't interpret the significance of that figure?-- Well, I can't interpret what it represents.

If the - it might tend to suggest that if the target for that year - that financial year is not reached, there is going to be some type of $750,000 penalty?-- If they were only going to be 92 weighted separations behind their whole target, there would be a lot less than $750,000 at stake.

$750,000 isn't the whole budget for elective surgery for a hospital like Bundaberg, is it?-- Off the top of my head, I must admit I wouldn't know what the funding - the elective surgery funding for Bundaberg would have been. I really don't know.

Okay. And just in relation to "92 weighted separations behind target", would that refer to some type of progressive target that should have been reached by that point and the hospital is 92 behind, or would it mean they have got 92 to get through before the end of the financial year?-- I would assume that what it means is a progressive target and that they would have been comparing their actual activity versus the progressive target as at that time.

Okay. And then there is further reasons given for the importance of achieving that target, and then the second sentence in the next paragraph, "Therefore, it is imperative that everyone continue to pull together and maximise elective surgery throughput until June 30. All cancellations should be minimal with these cases pushed through as much as possible, and to this end, as per draft policy, all elective surgery cancellations are to be discussed by Dr Patel, Dr Carter, Muddy and acting nurse unit manager operating theatre", perhaps?-- Yes.

"With the final decision being made by the Director of Medical

Services." Now, doesn't this indicate that at that time in that hospital, which is under your supervision, that there was a financial imperative at the Bundaberg Base Hospital to maximise elective surgery input through to 30th of June 2005?-- Certainly from my reading of this email the DMS was encouraging relevant staff to do all that could be done to ensure that their target - the elective surgery target was met.

Right.

COMMISSIONER: Well, the answer to that question is yes, isn't it, that at least he perceived there was a financial imperative to meet that target?-- Yes.

MR ALLEN: This email is sent at a time after there has been serious concerns raised by nursing staff in relation to Dr Patel. That's so?-- Well - oh, this is dated-----

8th of February 2005?-- Well, I believe so, yes.

Yes, after communications in which you have been involved with doctors from the Royal Brisbane Hospital raising serious concerns about the treatment of a patient?-- I had been in communication with the DMS of Royal Brisbane by way of my email in respect of the case that occurred in January 2005.

And after, it seems, the chief health officer has been asked to investigate Dr Patel?-- Yes.

Now, it is the fact, isn't it, that this objective of maximising elective surgery throughput until 30 June 2005, could not be done, as far as you know, in the absence of Dr Patel continuing as Director of Surgery?-- Oh, no, I really don't know that because I don't know - well, I understand that it appears that Dr Patel was a productive doctor. I don't know what the other capacity within the district was to achieve their target. Having said that, I mean, based on what I have heard, it would seem they would have had difficulty without Dr Patel.

Well, if they lost the Director of Surgery, lost the services of that surgeon, it would have been impossible to achieve that, I would suggest?-- It would seem so, yes.

Yes. Are you able to tell us whether or not that might have been a factor in the apparent intention on the part of the district manager that Dr Patel continue in his position until at least the 30th of June 2005?-- Peter Leck never made any mention to me when I discussed these issues with him on the 3rd of February in particular that - anything about that. I mean, he never made any mention that, you know, "I have got to hang on to this guy because he is really productive and if we don't have him we won't meet our elective surgery targets." There was no comment made by him in that regard at all.

Okay. And it wasn't a topic you raised at all?-- Certainly not.

Thank you.

COMMISSIONER: Yes, Mr Devlin?

MR DEVLIN: Thank you, Commissioner.

CROSS-EXAMINATION:

MR DEVLIN: Ralph Devlin, I represent the Medical Board of Queensland, Mr Bergin. Just one area relating to complaints. You are - during the period the calendar years 2003/2004, you were physically based in Brisbane?-- Yes.

And during that time, are you able to say whether staff within your zone ever came to you - no matter where in that zone - ever came to you directly with complaints about other staff members relating to the possibility of problems with patient safety?-- I can't recollect any.

Your experience as a zonal manager goes right back to 2001?-- Yes.

Can you recollect any circumstance - I don't need to know the details - but any circumstance as a zonal manager where that situation did occur; where staff came directly through to you about other staff?-- No, I can't recollect any.

So from your perspective as a zonal manager, as a practical matter where was your expectation that complaints would flow upwards through the system? Through what conduit?-- Well, complaints that staff had would be raised locally within the district, and then I guess the district manager would assess whether something was a significant issue, and, if it was, then that would be forwarded to me and then that would go on to my boss and then the Director-General, and I guess the Minister.

Again, in the period - let's just say 2003/4 for the moment as a zonal manager, was it your experience that district managers did carry out that function, assess a complaint and bring it to you to go up the line?-- Complaints of a wide nature, yes.

Sorry, I should have said complaints by staff about the competency of other staff with possible ramifications for patient safety. Can we look at that category? Can you think of any?-- Over what period again?

Just 2003/4; the two calendar years?-- I can't think of any specifically over that period that come to mind.

Do we take it then that as a general proposition, the complaints were resolved locally if they didn't come up through your office?

COMMISSIONER: Or not resolved at all.

MR DEVLIN: Or not resolved at all?-- One of the two, yeah.

Thank you.

COMMISSIONER: Mr Diehm?

CROSS-EXAMINATION:

MR DIEHM: Mr Bergin, my name is Diehm. I appear for Dr Keating. Just picking up on some questions that Mr Allen asked you a few moments ago with respect to your statement in paragraph 6D, what is discussed in there and, indeed, over the page concerning support given to credentialing and privileging is a reference, is it not, to support that was specifically given for the credentialing and privileging of rural practitioners?-- That's right.

So they are general practitioners working in small hospitals?-- Generally, yes.

Yes. Not, for instance, somebody practising as a surgeon in a hospital like Bundaberg?-- That's right. It didn't cover hospitals of the size of Bundaberg.

Thank you.

COMMISSIONER: So you couldn't give that sort of assistance to Bundaberg?-- Well, because - the Rural Credentialing and Clinical Privileging Committee was set up specifically to deal with the rural hospitals where clearly they couldn't arrange those committees themselves individually, so there was a committee established, and I guess because of the low volume, there was a committee established in each zone to cover those processes in the rural hospitals, and that was given to each zone to support. So it was specifically just for the rural hospitals.

MR DIEHM: You have also said in response to questions, I think again from Mr Allen, that a Director of Medical Services - might be a District Manager - contacted you in 2003 or 2004 and advised you that there was this problem in terms of getting nominees from colleges on to these committees, that you had a range of solutions open to you, including providing - well, apart from suggesting they make contact with one of the larger tertiary hospitals, but otherwise arranging yourself through a delegate for there to be somebody provided from one of those hospitals on to such a committee. When you did, in fact, learn of a problem of this very nature in October and November of 2004, you didn't do that, did you?-- That is true because with regards to Bundaberg and Fraser Coast there was a solution put forward that was going to be proceeded with by both districts of forming a collaborative to actually have the one committee covering both districts, and we understood that that was going to be implemented. So, in fact, there was no request that I can recall put forward for assistance from other sources, and it was understood that the solution that they had developed would be able to deal with the problem.

Mr Bergin, the joint committee between - the joint process between Fraser Coast and Bundaberg Hospitals was one which had been in operation since 2003. Were you aware of that?-- No,

I wasn't.

See, if you look at the document that is attachment 5 to your statement, which as I follow what your statement says is the relevant extract from the survey that was carried out by Central Zone into the status of credentialing and privileging, it speaks of being a document emanating from the Fraser Coast/Bundaberg Health Service District, does it not?-- Yes.

And the note on it represents, does it not, that what it says is the history is the history of this joint endeavour between Bundaberg and Fraser Coast?-- I hadn't interpreted it the way you have put it, and both this document and the advice that I was given by Mr Kerridge, the manager of the Central Zone management unit, was that there was some new initiative which was going to be implemented to attempt to overcome the problems that had been experienced in trying to get college representation through this joint venture, for want of a better word.

COMMISSIONER: This obviously is a note which deals with the problems of retaining college representation.

MR DIEHM: Yes.

COMMISSIONER: It doesn't seem to be what this witness is talking about, an alternative process.

MR DIEHM: No, it's not Commissioner. In fact, I might just clarify that.

Mr Bergin, there is, as you understand it, a document that was the source of the information for you in the first place that there was a problem with obtaining college representation?-- Yes.

Now, you are saying now that you understood from what Mr Kerridge told you that there was some new initiative-----?-- Yes.

-----that was going to overcome the problem?-- Yes.

What was it?-- Well, it was a joint initiative between the two districts to attempt to secure better representation, so increase the pool of potential people who could be on panels.

COMMISSIONER: That's local people?-- Yes.

MR DIEHM: Are you still speaking of the representation on the panel, the new initiative being a formation of a joint committee between the two districts?-- Yes, yes.

And you maintained, despite the appearance of attachment 5, that you were unaware that what had been in train for some time and what had failed thus far in obtaining college representation was, in fact, a joint committee?-- It was made

clear that we had to be going beyond college representation if we couldn't get college representation. My understanding was that this was a new initiative that the districts believed would assist in overcoming the problem.

Now, the source of your information in that respect is Mr Kerridge?-- Yes.

You don't know what the source of his information was?-- No, I don't.

It says in the attachment 5 that, "The Royal Australian College of Surgeons has been unable to provide a delegate as they have legal concerns." Did you gain an understanding as to what those legal concerns were?-- No, but I understand they related to indemnity issues.

When did you obtain that understanding?-- Only recently.

Only recently?-- Yes.

You didn't make any inquiry at that point in time as to what the legal concerns were?-- No.

Given that, as you have said in your statement, the preferred course - I think in fairness what you have done is acknowledge what Mr Kerridge said at that meeting to the District Managers who were present, that the preferred position was that they be a college nominee. Wouldn't it have been an appropriate response - and indeed I suggest this is the appropriate response - to find out what the problem was with the college providing the nominees?-- I guess I felt that this was a whole of Queensland Health issue and probably should be taken up in a whole of Queensland Health level.

So what did you do to take it up as a whole of Queensland level?-- I don't recall that I raised the issue. I can't recall raising the issue.

Whilst on that topic, if this was something that was already known about by management in Queensland Health, higher than yourself-----?-- Yes.

-----and that such people had an expectation that the problem would be overcome at a zonal level, that was something you didn't know about either?-- I'm not aware of your last statement, that somehow designs would overcome any legal problems that the colleges had.

You received no communication from anybody further up management in Queensland Health telling you that there was such a problem and asking for it to be dealt with at a zonal level?-- I can't recall that, no.

Thank you. Now, returning to one of my earlier questions, it was not the course of conduct that you engaged in in October or November of 2004 on learning of this problem to set in

train an arrangement for the providing of surgeons or other relevant medical specialists or committees from tertiary

hospitals within your purview to assist these other hospitals in their credentialing and privileging cases?-- Well, certainly that was an option that was available if local options failed, and I have indicated that Fraser Coast Bundaberg appeared to have the most problems and my understanding was that there was a solution proposed locally involving both districts joining as a collaborative to try and overcome those problems.

And if it was the case that there had been, in fact, a joint committee structure that was being sought to be pursued for 12 months or more by that point in time, that was something that you didn't know about?-- No, I certainly wasn't aware that that had been the case for 12 months.

Now, in terms of complying with the policy - sorry, I will withdraw that. You have given some evidence about the situation with respect to the offer of VMO sessions to Dr Thiele for venous access procedures that you said came out of a meeting that you had in involvement with some others earlier this year. You said that you learned during the course of the first Commission that the offer that was made to Dr Thiele was for some limited sessions, I think it was one session every two or three months. You expressed some disappointment with that. Is that disappointment because you perceived that that offer was inadequate?-- My disappointment was that we couldn't resolve the matter and get a service going, and I suppose I was surprised given that an offer of funding had already been made to the district prior to the meeting we had in Hervey Bay and had not been taken up. So the district knew - the district manager and medical superintendent knew there was additional funding, special funding available for venous access surgery. They'd been contacted by an officer from the Central Zone Management Unit, Zarina Khan, and there is an e-mail trail to that effect and that shows that the offer was knocked back. We then subsequently had the meeting at Hervey Bay with Peter Miach and others where it was agreed in principle that that would go ahead and that the arrangements could be worked out in detail and they would come back to me with a funding proposal.

What I'm trying to understand is whether there is some special significance in the offer of VMO sessions of one every two or three months. It would seem to be that that drew your disappointment. Did you feel as if that was an inadequate response to the service that was being sought?-- I - no. I was more disappointed that it hadn't happened. I didn't know what the quantum was - that was necessary to be able to provide a service. Clearly it didn't meet Dr Thiele's expectations or Dr Miach's expectations.

It certainly met Dr Thiele's. His evidence was that he thought that that arrangement - that proposal was-----?-- Okay.

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-----quite adequate-----?-- Okay.

-----for the need?-- Well, Dr Miach's - I guess Dr Miach's expectations. But for whatever reason, it didn't happen - well, not for whatever reason, it didn't happen and we had discussed it happening, it had been agreed by all parties, and then I found out later that it hadn't happened.

Yes. All right. When was that discussion, I'm sorry?-- It was, in fact, the second day of my visit to both districts, which was the 4th of February.

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4th of February?-- Yes.

Anyway, whatever may be the reasons behind Dr Miach's disappointment or the reasons for not developing, you're unaware of those, I take it?-- I'm - I am unaware of - yes, why it specifically it didn't go ahead, particularly if Dr Thiele was quite happy with what had been proposed. Then I can't understand why it didn't.

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All right. In your statement at page 11 you make reference to a conversation - this is at the foot of page 11 - make reference to a conversation you had with Mr Leck and you say that you had already been informed by Peter Leck that Dr Patel's practice had been restricted from including more complex procedures and that this action had taken - had been taken following discussions with Dr FitzGerald. Were you made aware by Mr Leck at all that, in fact, the restrictions on Dr Patel's performing complex surgery were, in fact, imposed several days before Dr FitzGerald's first visit to Bundaberg?-- No, I wasn't.

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COMMISSIONER: I see it's after 4.30. How much longer will you be?

MR DIEHM: Nothing, Commissioner.

COMMISSIONER: What's that?

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MR DIEHM: I am finished.

COMMISSIONER: Oh, you are finished. How long will you be, Mr Freeburn?

MR FREEBURN: I will be 20, 20 minutes or 30 minutes.

COMMISSIONER: Well, how long will you be?

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MR ANDREWS: At the moment I don't propose to ask any questions.

COMMISSIONER: Before we decide whether to proceed with you, Mr Freeburn, perhaps we should raise those other matters.

First of all, the doctor whose name has been suppressed, do you have any information about that? You are going to tell us

something. Mr Andrews is. 1

MR ANDREWS: I am instructed that Dr Anatole Kotlovsky has

been confirmed as a person who was engaged at the Bundaberg Base Hospital.

COMMISSIONER: During the relevant period?

MR ANDREWS: As to that, I haven't been instructed. 10

COMMISSIONER: Suppression remains in place until we get the time that he was there.

Can you help us with that, Mr Devlin?

MR DEVLIN: I can produce the file. I haven't quite got to the Bundaberg period yet. I am working through from the registration issues as I'm sitting here but can I produce it to the Commission. 20

COMMISSIONER: Why don't I give you five minutes to do that rather than producing it to the Commission, and then I will - - I intend to close the Commission to hear submissions or at least raise the matter of whether Mr Leck should give evidence before this Commission.

So the closure means that those who are not either parties or representatives of parties should now leave the Court. That includes journalists and photographers. 30

IN-CAMERA PROCEEDINGS ENSUED

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PUBLIC SESSION RESUMED

MR DEVLIN: Commissioner, while that's happening, I can confirm that Dr Anatole Kotlovsky served between February and April 2002 at Bundaberg Base Hospital on the certificate of Dr Kees Nydam. So that would suggest the appropriate period of service there. So on that basis I will make the file available.

COMMISSIONER: Thank you.

MR DEVLIN: It is in two parts. It indicates that he has been a registrar in Queensland since 1998.

COMMISSIONER: I won't make that an exhibit in these proceedings at this stage. I will make it - I will give it an exhibit letter, which is E I think. I will give it E at the moment and we can decide later what part if any anyone wants to use in this Commission.

MARKED "E" FOR IDENTIFICATION

COMMISSIONER: So I will therefore lift the suppression order in which I suppressed a name of Dr Anatole Kotlovsky. Is that how he spells his name?

MR DEVLIN: K-O-T-L-O-V-S-K-I.

COMMISSIONER: Thank you. And the witness is being brought back I take it?

MR DEVLIN: I know said "I". I meant "Y". K-O-T-L-O-V-S-K-Y.

COMMISSIONER: All right. How do you spell Anatole?

MR DEVLIN: I see a couple of different spellings. It would appear to be A-N-A-T-O-L-E.

COMMISSIONER: Thank you.

DAN BERGIN, CONTINUING:

COMMISSIONER: Yes, Mr Freeburn.

MR FREEBURN: Thank you, Commissioner. Mr Bergin, my name is Freeburn. I appear for Dr Leck. As the zonal manager you look after 15 different districts within that zone?-- Yes.

And I think you told us that stretches from the Brisbane River north to Rockhampton and out to the Northern Territory?-- Yes, yes.

And those District Managers have different - come from different backgrounds?-- Yes.

Sometimes they have medical expertise?-- Yes, very occasionally, yes.

Sometimes in the case of Redcliffe, they have nursing expertise?-- Yes.

And in the case of the Bundaberg district and Mr Leck, no medical expertise but other expertise?-- Yes, yes.

Management expertise?-- Yes.

In that case, where the particular manager doesn't have medical expertise, you would expect that person to take advice from the Director of Medical Services?-- Definitely.

Now, I gather you have a commerce degree?-- Yes.

But no medical qualifications?-- That's right.

And an important part of your role as a manager of the central zone was to ensure that districts remained within their budgets?-- Yes.

And that was one of the purposes of the services - service agreement?-- Yes.

The point of that agreement was to ensure that the District Manager committed to certain principles?-- Yes.

One of those principles being accountability?-- Yes.

And accountability meant, when you read the document, staying within the allocated budget?-- Yes.

And properly documenting the activities of the district?-- Yes.

Now, just if you have a look at attachment 7 to your statement, which is the service agreement, is that a standard form for the - for that year, for the - that is, you would have 15 of these on your file for that year?-- Yes, we had moved to a new format I believe in that year, which reflected the - the ISAP process that was going on in the Queensland Health - integrating strategy and performance, and the strategic intents that had been developed for the organisation. So it is a standard format that we use for all the districts in the central zone.

All right. If you go over to page 1 - forget about the front page but go to page 1, that has "Contents", "Guiding Principles", on page 4. Those are the guiding principles

including, right down the bottom, "Employing our finite resources to maximum advantage"?-- Is that under the "Key Budget Performance Principles"?

No, "Guiding Principles", page 4.

COMMISSIONER: It is the second-last dot-----?-- Oh, yes, yes.

MR FREEBURN: I see. Then "Performance Accountability", you see the next page?-- Yes.

"Managing Resources in Line with Allocated Budgets". Do you see the third line?-- Yes.

The next page, section B, the very first undertaking, "Achieve budget integrity"?-- Yes.

Which is, when you look at the "How Achieved" column, "Management of all elements of resource expenditure and revenue generation"?-- Yes.

"And achievement of activity targets"?-- Yes.

And if you turn over to pages 11 and 12, you will see appendix 1, "Queensland Health Business Rules"?-- Yes.

I will just quickly run through some of that for you. The purpose of those rules is basically - the first paragraph is essentially talking about consistent standards across health districts?-- Yes.

That is, consistent economic standards is what really is being discussed there?-- Yes.

Then "key budget performance principles"?-- Yes.

(1) is talking about funding. Number 2 is talking about operating result, financial position, funding and activity and resources. Number 3 is talking about financial performance, financial position and budget performance?-- Yes.

That's right?-- Yes.

You see that continues on. And you were taken over the next page to item 2 about budget - dealing with budget surpluses?-- Yes.

So, when we deal - when we look at this service agreement, it's fair to say, isn't it, that it's really dealing with financial resources management?-- Definitely.

And clinical outcomes are not a matter dealt with in any detail by this service agreement, are they?-- No, I would disagree with that. Certainly the - the Queensland Health Business Rules are - set out there, as you quite rightly said before, deal with matters to do with financial management. However, the service agreement - I mean, that's a standard document that applies to all districts. The body of the

service agreement though does include some clinically related matters and, you know, there a number that appear in the '04/'05 service agreement.

What are they?-- Oh, there is one to do with cold chain, for example. Now, that is ensuring that vaccines are properly stored so that they don't become ineffective. We have had problems with incorrect or improper storage such as those - such that those vaccines have been rendered ineffective and as a result have had to revaccinate numbers of people from time to time when that's occurred. Now, this had become a particular problem over the last few years, so it was included in the service agreements to highlight to the districts that they really needed to focus on their efforts in trying to improve their performance in this and comply with the guidelines that have been laid down.

All right. So there are - there is a mention of cold chain but you'd agree with me, wouldn't you, that the service agreement is really not specifically about the quality of the medical care that patients receive?-- Well, it includes measured quality which says, "Actively address significant variances identified in the measured quality process." It includes matters to do with child safety, mental health, primary health care, indigenous health. So I would - I would certainly say that the service agreements don't just focus simply on financial matters by any means.

No. But one high priority when you look at the service agreement is that a high priority for the district is balancing its budget?-- It certainly - it's certainly a high priority but it's by no means the only priority and I suppose the challenge - and it is a challenge that districts achieve a balanced approach to providing health services. Clearly, they need to work with finite resources but, certainly, they need to also strive to ensure that, you know, what we do is safe and acceptable quality.

Now, I gather one of your priorities was to ensure that District Managers were careful to keep within their budgets?-- I endeavour to do so, with some limited success.

Occasionally District Managers didn't meet their budgets?-- Certainly. We have had quite a number in the central zone.

And for a District Manager, that's a potentially career threatening mistake, isn't it?-- I think that the fact that a District Manager has their district overrun their budget of itself doesn't automatically mean that, you know, there are bad consequences for them. I guess it really depends upon what is driving that overrun and, clearly, if for example there are increases in patient activity that are causing those expenditure overruns and therefore the budget to be exceeded, then that would be taken into account and that there would be an assessment of the efforts made to manage the situation and, clearly, if a District Manager is doing the best they can, and they're still experiencing an overrun that can be linked directly to additional patient activity that they have no

choice other than to meet, then that would certainly be taken into account.

Had District Managers lost their jobs due to failure to meet budget?-- Well, the decision to remove a District Manager is made by the Director-General and the Director-General doesn't share his reasons for - that I'm aware of for removing - or renewing a District Manager's contract or removing a District Manager. I think there would be-----

So you're telling me you don't know?-- Well, they haven't told me exactly. Certainly there would be a perception amongst some District Managers that it could - financial overrun could lead to that.

COMMISSIONER: Is that your perception?-- I think that - I believe that it has happened in the past that District Managers have been removed because financial overruns have occurred and there is a view by the Director-General of the time that those District Managers really weren't up to the task of trying to deal with that situation.

Mmm-hmm?-- So, in other words, that the overrun may have had elements of mismanagement or poor management and that was the real reason.

MR FREEBURN: Did you tell any managers that they might lose their jobs if they didn't bring the district in under budget?-- I don't know that I necessarily put it in those blunt terms. I think I probably gave messages to people over time that, clearly, people were vulnerable, particularly in a situation where they couldn't point to additional patient activity driving overrun.

So you might have said it but not in so blunt terms?-- Yes.

To some managers, District Managers?-- Yes, yes.

Mr Leck?-- Certainly in the first - probably in the early years that I was zonal manager, '01/'02, it was an issue but in the last two or three years, it really wasn't.

So you probably did say to Mr Leck in 2001 or 2002 that - words to the effect of he might lose his job if he didn't bring the district in under budget?-- Certainly I would have - probably would have said he was vulnerable.

So it was an important issue for you to make sure that the districts within your zone stayed within their budgets?-- As it was for me with the zone. So, I guess it's a case of passing a - passing the parcel.

Okay. Now, could I take you to that forum which was on the 15th of November 2004. Do you remember that?-- The zonal forum?

Yes. I think it was called - in one document it is called the Central 6 and Zonal Forum. Are you aware that in the course

of that forum before he left, Mr Leck discussed with Mr Kerridge the need to review Dr Patel's surgical work?-- I only became aware of that during the last Commission of Inquiry.

Right. What Mr Kerridge told you?-- At some point during I think it was evidence.

Right. Were you aware this Mr Kerridge suggested that Mr Leck approach Professor Peter Donnelly to conduct the review of Dr Patel's clinical skills?-- Dr Peter Donnelly?

Yes?-- I've never heard that name mentioned. I thought that I - no, I can't recall that name being mentioned.

Okay. Now, can I take you to paragraph 6C of your statement?-- Yes.

Now, the question you were being asked there is were you aware of any difficulties that the districts within your zone were experiencing in empanelling, credentialing and privileging committees?-- Yes.

Is that right?-- Yes.

Your answer, in effect, is that you were aware there was these problems, is that right?-- Yes.

And when you look at the second dot point, see the survey - you talk about the survey, which we will come back to - "did identify a number of issues with how clinical privileging processes were operating throughout the zone." So can I suggest to you that a number of issues means it is a multifaceted problem, and secondly the words "throughout the zone" mean it is a widespread problem, not just Bundaberg?-- Yes, well, I think the briefing note that was subsequently compiled by Graham Kerridge did identify that. That has been tendered as an attachment.

Right. So you knew that it was a problem, that it was a multifaceted problem and that it was throughout the zone, not just in Bundaberg?-- As a result of the survey that was done, we knew that there were issues.

Right?-- Or we got, I suppose, a - specific data about the issues.

Okay. Can I just ask you about the survey? Who decided to do that?-- Well, it would have been done by the zonal unit.

Your unit?-- Yes.

You don't know who within the unit?-- I believe that probably Mr Kerridge organised it.

Why?-- Because I think that there were issues that were coming through the rural clinical credentialing and clinical privileges process that indicated that there were some issues, that there were some problems.

You see, the reason for the survey was that somebody was - somebody in your office, at least, was aware there was a problem, and that was in October of 2004?-- Yes, well, the secretariat that looks after the rural credentialing and clinical privileging process would have indicated to Mr Kerridge, "Look, there appear to be these problems", and as a consequence it was decided to try and get a better handle on what was happening.

How widespread the problem was?-- Exactly, yes.

And what it was?-- Yes.

And once you got this, what did you do about the problem?-- Well, we looked at - there was a presentation that was held

in December at the SCF - there was a workshop conducted in December for all the district executives on the service capability framework and that included a presentation on the credentialing and clinical privileging process and looking at strategies to try and deal with these issues.

Well, it was looked at in December. What did you do about the problem?-- Well, I think - I think that was the outcome, to actually have a discussion at that workshop as to how those issues might be better dealt with.

Anything else?-- Not that I can recall, no.

Did you ring the colleges?-- No. I was - I was aware that there were issues happening at a whole of Queensland Health level in relation to interacting with the colleges.

Well-----?-- And in fact-----

Did you contact the colleges and say, "Look, we have got this problem. How do we deal with it?"?-- No, I wasn't in the habit of talking to the colleges myself. That was usually done at a whole of organisation level.

Did you speak to Dr Scott or Dr Buckland about this specific problem?-- I can't recall whether I spoke to Dr Scott or Dr Buckland, but I know that Dr Scott subsequently wrote - I believe Dr Scott wrote to the college, so he was obviously aware that it was a problem.

Did you ask them or anybody else for resources to fix the problem?-- No, I didn't ask for resources. I don't know that it was necessarily a resources issue. I mean, we needed the input of expert medical staff. That was the key issue in - for some of these places.

You weren't getting it, were you? I mean, this was a problem throughout your zone. One of the aspects of that problem is an inability to find the right people to serve on these committees?

COMMISSIONER: Or perhaps it was a failure to ask people other than the college to serve on these committees. Do you know which it was?-- I think that people were probably adhering very closely to the guidelines which said that college - there should be college representation.

I understand that. But, as you said earlier in your evidence, correctly it seemed to me, it is better off to constitute some sort of-----?-- Definitely.

-----committee than to-----?-- Definitely.

-----adhere strictly to the letter of the guidelines?-- Definitely.

MR FREEBURN: Did you say that to people - district managers, "Look, the policy says go and get somebody from the

colleges."?-- Yeah.

"If you can't do that, go and get somebody else."?-- Yes, as I have indicated, at the zonal forum with all the district managers in November, that was stated to the district managers.

Right. Well, did you tell Mr Leck that?-- Unfortunately, Mr Leck had left for the tilt train incident, Bundaberg, and I don't know that the message was passed on. Having said that, the district manager for Fraser Coast was there, Mr Mike Allsop, and there was that coalition between the two districts in terms of dealing with this. So I suppose I - I mean, it just was an oversight at the time, the fact that he had left. I don't know whether we sent him any minutes that reflected this. It is something that is-----

Well, you didn't, did you?-- Well, we believe not.

Well, wouldn't it be - wouldn't it have been appropriate, given widespread problem throughout the district, pretty serious problem, to issue some sort of amendment to the policy or some sort of direction saying, "We're aware you are having this problem. Don't necessarily seek people from the colleges."?-- Well, we thought that by stating that at the zonal forum to the district managers that that would have been enough.

Stating it orally?-- Yes. I mean, I suppose these things are guidelines, and I guess one relies upon a certain amount of judgment, that if you can't secure the ideal, you go to the next best.

Just one thing about that report survey, the recommendations really deal with rural areas. Do they deal with rural areas?-- Well, that was our primary focus because it was the rural hospitals that this special mechanism had been established at a zonal level to support. They were the ones that were regarded as being in need of a particular mechanism to assist them.

But you were conscious that the problem was wider than that, wasn't it?-- Well, when we did the survey, it appeared that there were some problems, particularly, I might say, at Fraser Coast and Bundaberg. I don't know that, in fact, in other regional hospital - sorry, other non-rural hospitals, which - certainly the metropolitan hospitals, the large hospitals, I don't recall if there was a problem, and I don't recall that any of the other regional hospitals there was a particular issue.

Well-----?-- But there appeared to be a problem, a particular problem at Fraser Coast/Bundaberg.

Well, that's not the flavour of the report, is it? That's not the flavour of the survey. Just have a look at the survey, attachment 4 to your statement. See, you have - in introducing this in your statement you have said, "It is a

problem throughout the zone." Those are your words. Page two of the report you talk about the different aspects to the problem, meetings frequently cancelled, time-frames long, difficulties obtaining appropriate specialists, organisational use with some confusion, system waste. They are not problems limited to any particular zone, are they?-- Any particular district.

Sorry, any particular district?-- No, but I would say that probably in the Wide Bay, that was where it was felt the problems were greatest.

Anyway, that's your impression?-- Yes.

Now, the secretarial support-----

COMMISSIONER: Are you leaving that topic now?

MR FREEBURN: Yes.

COMMISSIONER: Just before you do, there was a workshop in December 2004 where the question of credentialing and privileging was raised again. You mention that in paragraph 6(f) of your statement?-- Yes.

And you say, "The presentation highlighted a clear delineation of roles between districts, and the committee and the risks that medical staff were appointed prior to consideration of the committee or to assess interim privileging."?-- Yes.

Was the matter of how you would constitute a body to perform the tasks of credentialing and privileging discussed at that forum?-- I can't recall that.

All right. Yes.

MR FREEBURN: Now, I gather the secretarial support that's spoken about is support offered only to the rural-----?-- Yes.

-----hospitals? And was there constructive assistance offered to the regional hospitals to get this problem solved?-- There is no - there is no secretarial support from the zone to the regional hospitals. Obviously, the fact that we're having - that we had discussions about this, both at the zonal forum in November and again at the December workshop, on the service capability framework where there was a special presentation of it, discussion, clearly it was an issue that we were putting on the agenda needed attention by the districts. I would expect that if districts were still having difficulties, that they would come back to me and say, "Look, we still can't get doctors/experts to appear to be part of our panel. What can I do to help?"

Mr Bergin, you knew there was the problem. You had done the survey, you got the survey results, you knew there was a problem, you effectively went to the meeting in November and you basically told the districts, "Here is a problem. You fix

it. We expect you to abide by the policy."?-- Yes. 1

That's effectively the flavour of what you said?-- Yes, and then we discussed how to go about trying to address that. Now, some of that would involve what the districts did locally and some would be whatever assistance that the zonal unit, for example, could provide in that process, which was limited in terms of, say, the secretarial support, because there was a facility to look after the rural districts, but the high volume that would be involved in the bigger places, of course, 10 would have been beyond the zonal unit. But obviously in terms of, as I say, trying to locate appropriate specialists, that would be something that I would have expected that they would have approached me if they had difficulties with.

Okay. So you knew there was a problem and you expected that they would come back to you if they weren't able to solve the problem?-- Yeah, after we had discussed the problem and some of the solutions as part of a collective group.

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Now, can I take you to attachment 3 to your statement. Do you remember that's the briefing note from Peter Leck?-- Yes, yes.

When you got that briefing note did you ask Mr Leck what the complaints were, how many and what type of surgery was involved?-- I think Mr Leck gave me a very summarised view of what had occurred.

COMMISSIONER: You mean you spoke to him on the phone after you got that briefing?-- No. No. I spoke to him at Bundaberg-----

All right?-- -----when I got there on the 3rd.

I see?-- And by that stage I'd received the brief and - as I have said before, I couldn't recall - can't recall whether I received it the day before or that day.

What did he tell you?-- Well, he said that, look, there's been these concerns raised in relation to Dr Patel. He said that there's been a lot of conflict, interpersonal-----

Did he tell you there'd been quite a large number of complaints, extending over more than a year?-- No. Not that I can recall. He indicated that there had been complaints, there had been a lot of conflict, he didn't know whether there was any substance to it, whether it was driven by the conflict or whether it was - there were real issues, but obviously he'd felt concerned enough to attempt to get some outside clinical audit.

MR FREEBURN: So, you don't recall asking what specifically the complaints were or how many or what type of surgery was involved?-- I can recall asking him what has been done to ensure that Dr Patel's practice is somehow restricted, and he indicated something about that he's not going to be doing cases that involve use of an intensive care bed.

COMMISSIONER: Is your answer no to the question that was asked?-- Sorry?

Is your answer no to the question asked? Your answer wasn't responsive to the question which was asked?-- Sorry, I forget the question.

MR FREEBURN: When you got the briefing note-----?-- Yes.

-----did you ask Mr Leck what the complaints were, how many there were and what type of surgery was involved?-- No. Not that I can recall.

Apart from talking to Mr Leck about limiting surgery, what did you do about this?-- Sorry, what did I do?

About this briefing note?-- Well, given that I was aware that the Chief Health Officer was going to undertake a clinical audit, I felt that - and also that the surgeon's practise had

been restricted-----

COMMISSIONER: You did nothing?-- I felt that we should wait until the outcome of the clinical audit.

All right.

MR FREEBURN: So, you basically awaiting an independent investigation?-- Yes.

Thank you.

COMMISSIONER: Thank you.

MR BODDICE: I understand Ms Dalton-----

COMMISSIONER: That was a long 20 minutes.

MR BODDICE: I understand Ms Dalton has a couple of questions - she's indicated-----

MS DALTON: I promise I will be five minutes, Commissioner.

COMMISSIONER: I don't think you should promise. Go on.

CROSS-EXAMINATION:

MS DALTON: Mr Bergin, I am Joan Dalton. I act for John Scott. I would like to take you to one topic and that is the meeting that occurred on the 8th of January 2004 between yourself, Dr Constantine Aroney, John Scott and Andrew Galbraith. I think you were asked some questions about that earlier today?-- Yes.

Dr Aroney says that at that meeting John Scott bullied him; that is, bullied Dr Aroney. Can you comment on that for me, please?-- That wouldn't be my assessment of what occurred. I believe that there was a very robust discussion of equals standing toe to toe, so to speak, and having that robust discussion.

When you say "equals", you mean Dr Aroney and Dr Scott as equals-----?-- Yes.

-----having a robust discussion?-- Yes.

All right. Was there - to your observation was there any intimidation of Dr Aroney by Dr Scott at that meeting?-- Well, look, I'm not an expert. I can only give a layman's view, but my impression of Dr Aroney was that he was not intimidated in any way-----

And-----?-- -----by anything that Dr Scott said.

He gave as good as he got, didn't he?-- That would be my view, yes.

Now, Dr Aroney says that after that meeting there was a press conference. Are you aware he says that?-- I have - I understand he has made that statement, yes.

Did you go to that press conference?-- No.

Did you speak to the press at all after that conference?-- No.

Were you ever asked whether at that conference Dr Scott bullied Dr Aroney and did you ever give an answer, "I don't know, I must have been at the bathroom at that time."?-- Certainly not.

How would you describe that allegation?-- Bizarre.

Do you recall yourself being on the receiving end of allegations from Dr Aroney that you didn't care if people died on Queensland Health waiting lists?-- I understand that Dr Aroney made that in relation to the meeting that - where I addressed the doctors out at Prince Charles Hospital-----

Yes?-- -----the 60 doctors. I can't - I can't recall that particular set of comments or statements by Dr Aroney, I must admit.

You don't recall him making that allegation about you?-- At the time at that meeting?

Yes. Well, at any time?-- I can't recall that, no.

You'd agree with me, I think, that any sincere person working in Queensland Health would be angered by such an allegation?-- Well, it's very offensive. It's - people might have concerns about the way in which things are done, but to sort of impute those sort of motives is pretty offensive, in my view.

Thanks, Mr Bergin. Thank you, Commissioner.

COMMISSIONER: Thank you. Mr Boddice?

RE-EXAMINATION: 1

MR BODDICE: Mr Bergin, you were asked some questions earlier in your evidence in relation to the systems in place to check on the performance of doctors and you referred to the service capability framework?-- Yes.

That's a system which was introduced effectively from July last year in respect of public hospitals?-- And, I thought, private hospitals. 10

I was going to suggest to you it's a system that had applied to private hospitals-----?-- Yeah.

-----prior to that date?-- I must admit, I'm not aware of that.

Certainly you agree that it's a system that applies now to both private and public hospitals-----?-- Yes. 20

-----from July last year?-- Yes.

And it's a system, and the Inquiry - previous Inquiry's heard evidence in respect of this, which requires the hospitals now to undertake the process of determining what procedures can be done within the hospital, having regard to the staff levels, the ICU levels, and all the other facilities available to the hospital?-- Yes. 30

In addition to that, there's the clinical - there's the credentialing and privileging system-----?-- Yes.

-----in respect of that process which is intended to be a process that checks on the credentials and privileges attaching to a particular doctor in a particular facility?-- Yes.

And is there also an accreditation process that applies to the hospitals?-- Yes. There's been a mandatory requirement that hospitals have some form of appropriate external accreditation for some years. 40

Is that through the Australian body - through an Australian based body?-- It's through an Australian based body commonly the ACHS, Australian Council of Health Care Standards, but not exclusively.

You were asked some questions in relation the elective surgery and the suggestion of being an incentive. Just in terms of the funding, the hospitals, in effect, if they undertake further elective surgery receive some funds to compensate for that fact; is that the case?-- That's very much the case and, in fact, it has been known for some hospitals, some districts to knock back extra elective surgery funding, particularly in past days when they regarded the funding as inadequate to cover the costs of doing that additional elective surgery. So 50

this idea that automatically elective surgery has been an incentive - sorry, the elective surgery program has been an automatic incentive for districts to do more surgery, in my experience, has not always been the case.

Because, of course, doing more surgery means you are using your staff, you are using operating theaters-----?-- Yes.

-----using consumables which all have a cost associated with it.

COMMISSIONER: I think we have been over that a couple of times already, Mr Boddice.

MR BODDICE: It was just a matter that was canvassed. Commissioner, I won't take it any further. Finally you were asked some questions in respect of the change in funding - either change in the service where cardiac services were provided by the Princess Alexandra Hospital?-- Yes.

Did you have any discussions with the staff at the Princess Alexandra Hospital in relation to those changes?-- There was a committee formed of clinicians from both senior clinicians from both Prince Charles Hospital and PA Hospital and I was part of that committee, together with my counterpart who chaired the committee from the southern zone, Karen Roche, and that committee oversaw the change, and there was work done for quite some months in planning it.

Was it something from the point of view of the Princess Alexandra Hospital that was welcomed?-- Certainly, in terms of making the - their service more sustainable because it had been in danger of, as I understand it, falling over because there was insufficient staff to allow it to keep going.

This is from the clinicians at the Princess Alexandra Hospital?-- Yes, yes.

Those are the only matters, thank you.

COMMISSIONER: Thank you, Mr Boddice. Mr Andrews?

RE-EXAMINATION: 1

MR ANDREWS: Mr Bergin, the service agreement which is annexure 7 to your statement is for 2004/2005. Would you still retain service agreements for 2002/2003, 2003/2004?-- Yes.

If someone approaches your - you at your office you will be able to supply copies of those?-- Certainly. For Bundaberg, just for Bundaberg? 10

For Bundaberg?-- Yes.

There were documents, significant issues reports sent about weekly by Mr Leck during 2003 and 2004?-- Yes.

Do you retain copies of those?-- That I'd have to find out but I would be sure that somewhere in Queensland Health they - a copy would be kept. 20

Thank you. I have no further questions.

COMMISSIONER: Thank you. You are also going to tell us who's being called tomorrow. Perhaps I can get rid of Mr Bergin first. No-one has any objection to that?

You are excused from further attendance, Mr Bergin. Thank you for coming?-- Thanks, Commissioner. 30

WITNESS EXCUSED

COMMISSIONER: Yes?

40

MR ANDREWS: Yes, Commissioner. After Mr Collins completes his evidence, a Michael Clare has been summonsed to give evidence and Mr Clare was a Cabinet Legislation and Liaison Officer for Queensland Health from January 1997 until January 2002. It's anticipated that Mr Clare's evidence will relate to waiting list issues for public hospitals, in particular surgical waiting lists, and he will give evidence of the use of the process of taking documents to Cabinet with the purpose or effect of avoiding applications brought pursuant to the Freedom of Information Act, and he will give evidence of that use or effect from a period in 1997 when there was a Coalition government and the use and - of that process then from the time of the Coalition government and continuing into the time of ALP governments. 50

COMMISSIONER: Thank you. I will now adjourn.

THE COURT ADJOURNED AT 5.24 P.M. TILL 10.00 A.M. THE FOLLOWING DAY