



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 11/10/2005

..DAY 22

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THE COMMISSION RESUMED AT 10.00 A.M.

COMMISSIONER: Mr McDougall?

MR McDOUGALL: Mr Farr.

COMMISSIONER: Oh, Mr Farr still? You're still going, are you?

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MR FARR: I haven't started yet.

COMMISSIONER: Oh.

MR FARR: I think we're waiting on the witness.

COMMISSIONER: All right.

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TERENCE MICHAEL HANELT, CONTINUING:

CROSS-EXAMINATION:

MR FARR: Dr Hanelt, my name is Brad Farr, I'm appearing on behalf of Queensland Health and Drs Krishna and Sharma. It's about those two fellows that I wanted to ask you just a few questions, and can I start my questions with a proposition that I'd ask you to think about and then at the end of my questions ask you to comment upon. The proposition is this: that Drs Krishna and Sharma were placed in an almost impossible position in so far as their employment circumstances were concerned, and I won't ask for a response to that at this stage, but can I take you to just some areas where I perceived there would have been difficulties and ask you to comment upon them? We know that they were both employed as under the Area of Need provisions; that's correct?-- Yes.

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We have heard in this Inquiry and in its predecessor that overseas-trained doctors employed in areas of need are really bound to that particular area; that's correct?-- They're bound unless they make application for registration within a different area.

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Yes. But their employment is dependent upon them, unless receiving approval to the contrary, remaining in the particular Area of Need that enabled them to arrive in the first place?-- That's correct.

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And we have heard, either from overseas-trained doctors or from those who have worked with them who have had personal or

first-hand experience of their difficulties, that such doctors in such circumstances often feel in a rather vulnerable position in that they don't feel that they are in a position to make waves, if you like?-- There's certainly potential for that perception. 1

I'm not suggesting that the perception was accurate or inaccurate, I'm not interested in that side of things, but would that be your understanding of the position for many of them, at least?-- Yes. 10

That perception on their part can manifest itself in a number of ways, I would suggest, but perhaps the most obvious is that such doctors would do their best to undertake what is required of them to prove themselves to be a good doctor, a good employee?-- Yes.

A lot of these overseas-trained doctors in more recent times, in the last couple of - two to three years, have come into this country from countries which are not so well off, so we've put aside the English, the Irish, the Canadian doctors, that sort of thing, but we see a lot of doctors coming from countries that their living standards might be considerably less than that of Australia?-- Yes. 20

Frequently, they come with families?-- Many do.

Now, I note that Dr Krishna arrived with a family; is that right?-- Yes, I'm unsure of what he's got in the way of but I know he's got wife and children. 30

And I'm unsure as to Dr Sharma; do you know in that regard?-- No, I don't.

And they then attempt to establish themselves in a new country and establish their families?-- Yes.

And Dr Krishna would be, as I understand it, a good example of all of those things that we've just spoken of?-- Yes. 40

Now, this perception or concern that such doctors might have would no doubt have, excluding any other issues, its genesis in the knowledge that if for some reason their employer no longer wished to retain their services at the end of the 12 month contract, it need not be reviewed?-- Yes.

And they don't have the advantage of an Australian medical practitioner, for instance, in simply looking for a job elsewhere?-- It's more difficult, yes. 50

And the risk they run, no doubt, is that if the contract is not renewed, their Visa conditions are not fulfilled, their Visa is rescinded, if you like, and they run the risk of being returned to their home country?-- Yes, their Visas are dependent upon them maintaining registration and employment.

And sometimes returning to their home country is probably - well, is the last thing that they want to occur; that's

frequently the case as I understand it?-- Well, they would certainly prefer to remain in Australia than return.

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All right. So even under the most optimal of circumstances, overseas-trained doctors have some considerations in the course of their employment that Australian-trained doctors do not have?-- Yes.

If we then focus our attention specifically in Hervey Bay and Drs Krishna and Sharma, they had an added difficulty, I would suggest to you, and that is that for a fair proportion of the time that they have been employed at that place, they've not had the advantage of a supervisor, a constant presence of a supervisor, if I can word it that way?-- Yes.

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And having the constant presence of a supervisor, whether or not it falls within the rules, requirements or conditions of employment, I take it is undoubtedly beneficial?-- Dependent upon that supervisor one would hope it's beneficial.

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Yes, certainly, depending upon the person. Now, these fellows, of course, were placed in the position of having to work to the best of their abilities trying to achieve what apparently was being asked of them but often having to make decisions without consultation of the Director of Orthopaedics, for instance?-- Yes.

And as I understand your evidence to-date, that is a less than optimal circumstance?-- Yes.

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It, of course, opens them up to potential criticism and perhaps unfair criticism because you might have in such circumstances one doctor, for argument's sake, who adopts the approach that he or she really can do nothing other than, well, without first speaking to someone, a specialist of some description, whether it be their own supervisor, so VMO from the district or get in touch with someone from the RBH or PAH, that type of thing, so that everything is slowed down, things that should take a short time might take much longer; that's a potential area of difficulty, isn't it?-- Yes.

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Equally, you could have doctors who have confidence in their own ability, and whether it's justifiable or misplaced I'm not interested in, but have confidence in their own ability who would then make decisions that they consider to be appropriate without consultation with others and still might find themselves the subject of some criticism or complaint because of the nature or the things that they're doing?-- Yes.

It places a person in those circumstances in a rather difficult position in that they have to consider, I suppose, almost every decision they make of trying assess what is best in the circumstances?-- Yes.

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And the considerations they have extend above and beyond those which an Australian-trained doctor would have?-- Potentially, yes.

All right. Now, just excuse me for just one moment if you would? Could I suggest to you that an example of that which we were just speaking can be found in the e-mail that was shown to you yesterday which is attachment 21 to your statement from Dale Erwin to Mike Allsop, and I'll just read the sentence to you, I don't know that we all need to see the document again, but she says this: "The ortho SMOs will not carry out anything without discussing with Morgan.", and she then goes on to speak of a particular case and an example. The tenor of that e-mail is - quite obviously it's an e-mail in which she's expressing some degree of frustration at the circumstances as they existed at that time?-- From that sentence it certainly gives that impression.

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Equally, someone could write exactly the same sentence in a different context and it would be complimentary, for instance?-- Yes.

For instance, you could have the start of that sentence, "They are to be commended because these ortho SMOs will not carry out anything without discussing with Morgan.", it depends on the nature of what's being discussed, but we can clearly see that this is a letter of frustration, if you like?-- Yes, I agree.

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That is, would you agree with me, a good comparable of the difficulties that these fellows were placed in that whichever way they go, they could very well be the subject of complaint or criticism notwithstanding their best intentions and endeavours?-- Totally agree.

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The effect of the particular circumstances that presented themselves to Drs Krishna and Sharma were these, I'd suggest to you: that they had added difficulties over and above that of the average overseas-trained doctor in Queensland because of the amount of leave that Dr Naidoo took during the time that they were there?-- I would assume that that would be correct for the average OTD.

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COMMISSIONER: You assume that that would be what?-- Correct for the average OT, I assume that the average OT would have a supervisor available or had less leave than Dr Naidoo.

Thank you.

MR FARR: And in so far as these two fellows are concerned, the picture which is painted, I'd suggest to you, and I'd ask for your comment, is of two men endeavouring to complete the tasks required of them in the most appropriate way given all of the surrounding circumstances that existed at the time?-- Yes, I would agree with that.

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The official proposition that I put to you specifically relating to these two fellows was that they were placed in an almost impossible position is a proposition that has its foundation, if you like, in the concern that clearly exists

that whichever course they adopt, they might well be the subject of some degree of criticism?-- Yes, they were certainly in a difficult situation.

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All right, yes, thank you, that's all I have.

COMMISSIONER: Thank you. Yes, Mr McDougall?

MR McDOUGALL: Thank you Commissioner.

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RE-EXAMINATION:

MR McDOUGALL: Dr Hanelt, my learned friend Mr Farr was asking you questions about, I suppose to put it one way, the insecurity that Dr Krishna and Dr Sharma might have felt. That's really tended to change now, hasn't it? Drs Krishna, for example, became an Australian citizen some years ago?-- Yes, the situation for both Dr Krishna and Dr Sharma has changed; they have both successfully completed their Australian Medical Council examinations; they've both been required to complete a period of supervised practice by the Medical Board of Queensland; Dr Krishna has completed that period of supervision and his paperwork is currently before the Board to get unconditional registration. Unsure of when the Board meeting was so he may or may not at this moment have unconditional registration; and Dr Sharma is currently completing his period of supervised practice in the disciplines determined by the Medical Board.

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That's the case also, isn't it, that it's been suggested to Dr Sharma that he may well seek to undertake a training course for orthopaedic surgery?-- In the Australian Orthopaedic - not the - the North/Giblin report, there was a suggestion that Dr Sharma should apply for advanced training program in orthopaedics. He made application to that for that program, unfortunately, his first application wasn't successful. He has now been offered a job in one of the teaching hospitals in Brisbane as Registrar status post.

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So many of the criticisms where - whether they were appropriate or misplaced criticisms - Dr Sharma and Dr Krishna being overseas-trained doctors really no-one applied?-- They have.

In so far as their qualifications are concerned?-- Yes.

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Doctor, could you tell me a little bit please about the Hervey Bay Hospital, how it started and its history over the last few years?-- The hospital originally opened in, I think May of '97. At that stage it was a 40 bed, what could best be described as a cottage hospital. There had been a previous hospital in Hervey Bay. When the doors opened, the whole - the old service and old patients were simply moved to the new hospital. Then over a period of-----

Could I just stop you there for a moment. When you say there was a cottage hospital, that was much the same, was it, as many of the rural hospitals in Queensland?-- Yes, certainly the rural hospitals that are serviced by a GP with a part-time appointment or a GP with full-time appointment where there's minimal procedural work conducted.

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Mmm, and you've been - you have a history of employment in those sorts of hospitals?-- Yes, I've worked in one hospital that would be similar size, similar service capability as the old Hervey Bay Hospital.

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All right. And you tell us that there was this cottage hospital in Hervey Bay and then a new premises were built?-- Yes.

And the staff was lifted - well, the staff and everything else was lifted from the cottage hospital into the new Hervey Bay Hospital?-- Yes, the staff-----

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The only thing new about the hospital though were the buildings themselves?-- The buildings, the beds, the equipment, the X-ray machines, that-----

And how did things change after that?-- As required staff were recruited, services were progressively opened, the timeframe was not exactly certain, but around about September Internal Medicine-----

September what year?-- Of '97, Internal Medicine started providing a specialist service at the place in January of the following year. There was anaesthetic services provided there and the Obstetrics and Paediatric units came into function. Elective surgery or day surgery commenced there at approximately the same time and in around about August, maybe September of that year, the on-call surgical service commenced.

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COMMISSIONER: Doctor, you may have told us this, but when did you start at Hervey Bay?-- I started working in the district before the hospital even commenced construction.

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And were you at - were its first Director of Medical Services?-- Yes, back then it wasn't called a district, I think it was a health service area or some title which was a Hervey Bay/Maryborough Health Service and I was appointed Director of Medical Services there in August 11 years ago.

MR McDOUGALL: And did the - is it possible to categorise hospitals? I think we've heard the term an acute care hospital or a 24 hour acute care hospital; did Hervey Bay become such a hospital?-- The terms aren't quite terms that we use in our role delineation, but there was a 24 hour service even at the cottage hospital which was a doctor would be called in if necessary, but when it first become 24 hour acute care function in Internal Medicine, when that service opened of around about September '97, we became 24 hours in Obstetrics, Paediatrics in January of '98 and 24 hour in the

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Surgical Services around about August '98.

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Is it reasonable to say that orthopaedic injuries are probably the most common presentations to Accident & Emergency hospitals or one of the most common?-- Amongst your non-medical, yeah, the commonest thing unfortunately that we get in our emergency department is people's coughs and colds and skin rashes who more appropriately would see a GP.

Leaving that aside?-- But of the higher priority patients, certainly trauma which usually includes orthopaedics is one of our very common presentations.

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Now, Dr Naidoo, I understand, was employed at the hospital from 1997. Prior to his employment, how were orthopaedic presentations in Accident & Emergency dealt with at Hervey Bay?-- Hervey Bay, if a patient presented there prior to the orthopaedic service being established at Hervey Bay, the patient was either managed by the emergency department doctor if it was a problem they could manage such as a dislocated shoulder or a dislocated finger or fractured wrist. If the condition was more serious than that and needed specialist care, they were referred to Maryborough if there was a service available or further afield if there was no service available at Maryborough.

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That would be so in circumstances where emergency treatment wasn't necessary, by that I mean immediate treatment wasn't necessary on a presentation. In circumstances where emergency treatment was required, what would happen at the hospital?-- Whenever the medical staff that were on would do the best within their capability. If they felt the condition was something beyond their capability, there was a senior medical officer who lived in - there was two Senior Medical Officers living in the town who used to provide senior on-call service.

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When you say "Senior Medical Officer", you're not suggesting that these were specialist orthopaedic surgeons, for example?-- No.

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Or specialists at all?-- No.

Is this any different from any other rural hospital in Queensland?-- That's the model that's used in the majority of hospitals that aren't one doc outposts.

Now, you told us that as things changed or as things developed at the hospital, various other services were offered by the hospital, for example, O & G; is that right?-- Yes.

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Was that dependent, the offer of that service, was that dependent upon the recruitment of specialists?-- Yes, it was dependent upon the recruitment of - to open a O & G service you need adequate anaesthetic service, O & G service, paediatric service and obviously the nursing staff to provide the care for the patients.

And until such time as those specialists were available, the

service wasn't available to be offered?-- That's correct.

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Did you have the same - you've told the Court about the difficulties you had recruiting orthopaedic surgeons. Did you have the same difficulties in other areas of specialty?-- It varies from specialty to specialty and it varies from time to time.

Which are the most common?-- The areas we have major problems with would be Internal Medicine, Psychiatry, Anaesthetics, Orthopaedics. The areas that we haven't - which is the majority of our services. The areas we haven't had major difficulties over time has been Paediatrics, we haven't had huge problems with Obstetrics, I think that covers the range of services.

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And there are some services that you don't offer at Hervey Bay; is that right?-- Yes.

Like Neurology?-- Yes, there's many services, subspecialty services, there's no gastroenterology, there's no cardiology in the medical specialties, certainly in surgical specialties there's no ear, nose and throat, and there's no neurosurgery, no plastic surgery, no vascular surgery.

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And in circumstances where someone presents into the Accident & Emergency Department requiring the services of that - that particular area of specialty, you have no choice but to refer them on?-- Dependent upon the condition of the patient, the decision is made whether it is - whether the greater risk or the lesser risk is to refer the patient to an appropriate facility or to treat the patient. There as an example which may help enlighten people, is if someone turns up with a ruptured aortic aneurism, if we try to transfer that patient to Brisbane, that patient dies. We do have general surgeons available who have limited training in those procedures and they attempt, sometimes successfully, sometimes unsuccessfully to save a patient.

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Very well. Now, Hervey Bay itself, would you describe that as being a population as being fast growing or-----?-- Yes, it's experienced extremely rapid growth rate in the 10 or so years that I've been there. It's frequently named as one of, you know, the top two - within the top three fastest growing shires within the State.

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All right. Could you tell us, have you investigated for the purpose of this Commission the number of orthopaedic admissions to the hospital over the last five years?-- Yes, we keep a record of the number of admissions, I cannot tell you the exact number for Hervey Bay, but within the district it's between eleven and 1,200 per year.

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It's the case, is it not, that apart from some elective procedures, for example, joint replacement, virtually all orthopaedic admissions to the hospital arise out of someone presenting at the Accident & Emergency Department; that's leaving aside specialist private lists?-- Certainly the

majority of the through-put of the place is through the emergency department.

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COMMISSIONER: But a lot of elective surgery would not come through emergency departments?-- No, a lot of the elective surgery does not come through the emergency department, a lot of the - a fair proportion of does come through - if somebody comes through, has pins put in a broken wrist or a broken elbow.

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Mmm?-- They're an emergency case at that stage. When they return to get their wire taken out-----

Mmm?-- They're then classed an elective patient.

What about elective medical problems, non-urgent medical problems; do they all come through emergency?-- Are you talking about orthopaedics or in general?

I'm just talking about general medical problems rather than necessarily surgical ones?-- The elective admissions for procedural medicine as in surgical type stuff?

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Mmm?-- The majority of elective admissions for most specialties come through the specialist clinics rather than through the emergency department, most other admissions come through the emergency department.

Thank you.

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MR McDOUGALL: Now, at the moment, do you regard your hospital as having its full compliment of medical staff?-- No.

Where do you rate it?-- From the approved establishment which is the number of docs that I'm - I currently have approval from Queensland Health to recruit, we're running at around about 75 per cent.

So does that mean that you haven't been able to recruit 25 per cent of the specialist staff or medical staff which I imagine include specialists that you have actual approval for within your budget?-- Yes.

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And is that across the disciplines that you've told us about this morning?-- It varies from discipline to discipline, Paediatrics and Obstetrics we're fully staffed, Internal Medicine is our worst staffed area at the moment.

So far as orthopaedics are concerned - is concerned, what would you regard your optimum level of staffing to be?

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COMMISSIONER: Is that on the assumption that the orthopaedics department is reopened or remains closed?

MR McDOUGALL: Reopened; what would you have regarded your optimum staffing for your orthopaedic department to be over the last five years?-- If we have a orthopaedic department that's functioning providing emergency and elective surgery,

we need a minimum of four orthopaedic surgeons. I would like to see two full-time orthopaedic surgeons so that when one is on leave, there is still one on campus and the number of VMOs, that's basically whatever VMOs came to the district would get a position, but we would like at least two so that when one's away on leave, we could have one in four, at a pinch we can drop down to one in two for a period.

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Very well. Has that always been what you consider to be the optimum level of staffing for your department - for the orthopaedic department?-- I can't say that's always what I have considered but certainly has been in the period that I can remember when we had minimal service to start off, when we were just doing elective orthopaedics in the place before we opened up the 24 hour service. It wasn't the staff required for that service but certainly to provide a full service that's what's required.

Have you been frustrated - well, you have told us about your frustrations in recruiting staff to reach that optimum level?-- Yes.

You came to employ Dr Krishna and Dr Sharma. Was that as a consequence of advertising for - and I will ask you to tell us about that advertising in a moment - but advertising for specialist orthopaedic staff?-- Yes, the districts has advertised for specialist orthopaedic staff. The majority of that advertising has been unsuccessful.

COMMISSIONER: But did they answer-----

MR McDOUGALL: Did they come - I am sorry, I was going to clarify.

COMMISSIONER: I was, too. Did they answer advertisements for orthopaedic surgeons - orthopaedic specialists?-- I honestly cannot give you the answer to that one. I would have to have the personnel file to see when we advertised and when they asked for positions.

Can I just take you back? We heard it is about three and a half hours from Hervey Bay to Brisbane. What is it by road from Hervey Bay to Bundaberg?-- Roughly an hour and a quarter, an hour and 20.

Thank you.

MR McDOUGALL: Now, you also told us about - told the Court about a mail-out to - I think you said every registered orthopaedic surgeon in Australia and New Zealand?-- Yes, we performed two mail-outs of that type in conjunction with local private hospital.

Is it in that way that the knowledge that Hervey Bay is searching for orthopaedic staff becomes widespread throughout Australia?-- Certainly by that method every person who has got the appropriate qualifications to fill the position knows advertising in the newspaper only gets to the people who bother to buy it and read.

If I can just ask you a couple of questions about Dr Naidoo's employment? Did Dr Naidoo to your knowledge receive any salary entitlements over and above what the employment agreement or award, for want of a better description, that applied to all staff specialists?-- He was employed and his

conditions of employment applies to staff specialists throughout Queensland Health.

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Is it the case that you have no input into that?-- My only input is to advise the human resource department of what level within his range of the pay scale. To explain that a little better, as a staff specialist, there is annual increments dependent upon how many years you held registration as a specialist in that discipline in Australia. My job is to check his credentials, paperwork to establish whether the person has been established for one year, five years, or 10 years and advise pay office in relation to that so they know the salary level he should be on.

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Does the same apply to Dr Naidoo's ordinary leave entitlements?-- Dr Naidoo receives the same leave entitlements as does any other staff specialist employed by Queensland Health.

Right. Now, you have told us about difficulties with recruitment of permanent staff. Did you encounter the same difficulty in employing locums?-- In the period there with orthopaedics we managed to recruit one full-time orthopaedic surgeon, who was Dr Naidoo, and we managed to recruit one VMO, who was Dr Mullen. In that same time period we have only ever managed to recruit one locum orthopaedic surgeon.

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How did you go about employing locums generally? Is it by advertising or do you use another method?-- There is three basic methods by which we obtain locums. Some of the specialist colleges have their own locum provision service. If I need a general surgeon locum, then the College of Surgeons run a very good program where any of their members who are after locum work register with the college and the college try to match the skills to the requirements of the location. That doesn't function in orthopaedics. The other two methods that we utilise, one is there are multiple locum agencies, multiple recruitment agencies who we notify when we have a position that we need to fill, whether that be a locum or a longer term position. Notifying them is basically unnecessary because as soon as somebody comes on to their books, they do a spam email to probably every hospital in Australia, but certainly the list is a huge list of recipients. So we get - inform any people who are available to perform locum work. And the third, which is probably more successful than the others, is the staff themselves, through their contacts, their college meetings, get to know who is around, what's around, and they can often get a mate to come and help them out.

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Is that how you found Dr Kwon, through word of mouth?-- Dr Kwon we got through one of the locum recruitment agencies.

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I see?-- I was lucky enough to be one of the first to open the email and got on to him first.

Can I take you to your relationship with Dr Sean Mullen? Did you ever, during your association with Dr Mullen, bully

Dr Mullen?-- I do not believe I was in the position where I had the potential to bully him.

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Did you in fact bully him?-- No.

Did you ever act in an aggressive manner towards Dr Mullen?-- No.

Could you describe to the court what your relationship with Dr Mullen was like. For example, by September 2002 when Dr Mullen chose to withdraw his - partly withdraw his services from the hospital?-- I was - my relationship - certainly Dr Mullen and I would talk whenever we passed each other in the corridor. If I needed-----

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And could you tell the Court what the nature of those talks was?-- Sometimes it would just be social hello, how are you going, how are things. Other times we would have more prolonged conversations where he may ask in relation to what's happening about this service or what's happening about that service. It was just general corridor conversation, I guess would be the best way of describing it.

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Is it the case that from time to time Dr Mullen made complaints to you?-- Yes, Dr Mullen made complaints in relation to several matters during the period of his employment which were detailed in yesterday's evidence, which was the lady who ended up with the amputated arm, spoke to me about the supervision of junior docs, spoke to me in relation to having a surgical principal house officer being the first on call for orthopaedics.

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Well, can we deal with some of those things individually? How did you respond to Dr Mullen in relation to the - I think Mrs Green, was it, the lady with the amputated arm?-- I believe that was the lady's name. In relation to that, took on board Dr Mullen's concerns in relation to the lady, then followed that matter up with Dr Naidoo.

Dr Mullen asked you or suggested to you, did he not - or we have heard from Dr Mullen who said that he sought your support in performing surgery on this patient?-- Yes.

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And did he get your support?-- Yes.

And you then followed up later in response to Dr Mullen's complaints about Dr Naidoo's treatment?-- Yes.

Did you pass on to Dr Mullen the fact that you had spoken to Dr Naidoo about it?-- That is something I cannot recall.

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Was the nature of the discussions you had with Dr Mullen about this patient, were they on a friendly basis?-- Certainly I don't remember ever having anything other than friendly conversations with Dr Mullen.

How do you regard Dr Mullen as an orthopaedic surgeon?

COMMISSIONER: Well, are you an orthopaedic surgeon?-- No, I am not an orthopaedic surgeon.

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Do you think you are qualified to judge that?-- No more or less than judging the quality of the other staff within the establishment.

MR McDOUGALL: You have got to have an opinion about all of your staff, haven't you?-- Yes.

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How did you regard Dr Mullen?-- From my discussions - how I judge staff may be worth explaining. Certainly-----

Well, could I just stop you there? Just so far as his ability as an orthopaedic surgeon is what I asked you, could you just address that first?-- To my belief he is a quality orthopaedic surgeon.

A quality orthopaedic surgeon?-- Yes.

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Would you have any hesitation, if you had the opportunity now, to employ Dr Mullen as an orthopaedic surgeon at your hospital?-- I would certainly reemploy him, and Dr Mullen is aware of that because I have written to Dr Mullen subsequent to his resignation to ascertain what's required for him to be willing to resume provision of services.

Dr Mullen has told the Court that you were unresponsive - to paraphrase his evidence, you were unresponsive to his complaints about a lack of supervision of Drs Krishna and Sharma. What do you say to that?-- I do not agree that I was unresponsive. There was differing opinion in relation to the level of supervision that was required. After a period when it became evident that there was no real resolution, the Australian Orthopaedic Association were asked to nominate reviewers to come and provide independent opinion so that I could make a judgment from unbiased people who-----

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Did you discuss this dilemma, I suppose you had, between - based on the opinion of Dr Naidoo as to the need for supervision and Dr Mullen's opinion in relation to the need for supervision, did you discuss that dilemma with Dr Mullen?-- Certainly that matter was discussed with both Dr Naidoo and Dr Mullen.

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Was it the case that you ever ignored Dr Mullen's complaints?-- No.

Up until this Commission of Inquiry, had you ever any reason to doubt Dr Naidoo's integrity?-- No, I did not doubt Dr Naidoo's integrity prior to the Commission.

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COMMISSIONER: You have had a - you had had a large number of complaints about Dr Naidoo taking time off when he should have been there?-- Yes.

That didn't cause you to doubt his integrity?-- It caused concern until I got response from the human resource people

that all of his leave entitlements were - all of his leave was taken within his entitlements.

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But that wasn't the question, was it? The question was whether he was taking time off when he was on duty?-- Yes, and could find no evidence at that stage that he was.

But as you explained to us yesterday, it would be very - almost impossible to find any such evidence from the human resource people?-- Certainly difficult.

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Almost impossible?-- Yeah, quite difficult because it took search of telephone records and search of petrol to establish that there was a problem.

And you didn't ask them to do that?-- No, the search of telephone records was something that hadn't even occurred to me until the Commission produced those or somebody produced them in the Commission.

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Anyway, you didn't ask them to do that?-- No.

All right.

MR McDOUGALL: Was there any need for you to ask them to do that within the knowledge that you had of Dr Naidoo's situation at the time?-- At that stage I did not see any reason to try to find lateral ways to check up.

COMMISSIONER: Did you disbelieve your staff when they said that he was not on duty when he was supposed to have been?-- The majority of the time when there was complaints about him not being on duty when he was supposed to be on duty, as was explained yesterday, he was located and he was performing what he was supposed to be doing or he was already on legitimate leave, that the staff member who claimed he was absent without leave simply did not know he was on leave.

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So you didn't believe those complaints?-- It is not a matter of disbelieving. If somebody complains and says he is not at work, he should be here, the man is on rostered leave and that staff member was unaware, that is not disbelieving that person.

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They could have been mistaken you mean?-- Yes.

Yes.

MR McDOUGALL: All right. Have you ever had any reason to doubt the professional ability of Dr Naidoo?-- The clinical concern raised prior to the Commission was in relation to the lady with the arm. In relation to that patient the explanation of his clinical care was a perfectly reasonable explanation. Other than that I didn't have other matters that had come to my attention in relation to his ability to perform surgery or look after patients.

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Now, we have heard evidence about the frequency with which

morbidity and mortality meetings were held in the hospital, and, as I understand it, the frequency of those meetings has now increased and they have become more regular, is that the case?-- The morbidity mortality meetings, the weekly meetings continued up until May of this year. The longer term audit meetings, the computer software was installed early in this year. Staff-----

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Could I just stop you there for a moment? You seem to be distinguishing between two different meetings. You say the morbidity and mortality meetings continued on a regular basis. What meetings do you mean by that?-- There is a weekly meeting where the management of the patients that have presented within the previous week are discussed and notes checked to make sure that everything that was required to be done has been done. If there was an abnormal result come back, make sure it hasn't been overlooked. So that's the ongoing morbidity mortality type meeting which is held in just about all departments in just about all hospitals, I would expect. Then you have the longer term morbidity mortality where you look at your outcome data.

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Is that to provide a bigger picture?-- Yes. If you get two wound infections in one week, that doesn't necessarily mean that there is a problem. If you get a wound infection rate of 10 per cent over three month period, then you know you have got a problem that needs to be looked at. So by getting the longer term data available, you can look at areas where there definitely seems to be a problem and then look at what's necessary to try and improve that problem, and then after that change has been instituted, look at the outcome in your data to see where the changes improved made no difference or made things worse.

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What happened at your hospital to change the frequency or regularity of this latter meeting that you have described?-- The commitment of - there was two things required to be able to get the longer term meetings running properly. One was a proper data system, to get that up and running, and the second was somebody to do the data entry into that scheme.

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So collect the data and enter it?-- Yes, the docs collect the data on to a standard sheet and then somebody enters the data into the database. So we needed to get the database, we needed to get the person to run the database, for want of a better word. The things that happened is the computerised program became available. Dr Naidoo had requested the information technology people to assess the various forms of databases that were available for audit. I am unaware when he made that request but I know it was in the second half of last year that I received a copy of the email sent from the IT people to Dr Naidoo saying, "This is now available. I have had a look at it. Looks good. Can you come and have a look at it?" That program was then purchased by the district. The person to enter the data into the database became available because of a redeployment. The old Hervey Bay cottage hospital had been turned into a nursing home. The government then decided to sell that nursing home to the private sector

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and Queensland Health staff working that nursing home got redeployed to the hospital. There was an admin person who I managed to convince executive it would be best deployed to provide quality assurance data entry function for our medical staff.

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You were asked a number of questions yesterday about the adequacy of the service and the safety of the orthopaedic service in circumstances where there was not a specialist or a consultant orthopaedic surgeon available to supervise Dr Krishna or Dr Sharma. And in answer to one of the questions you said that in those circumstances you are forced to provide a lower level of service. Could you tell the Commission what you mean by that?-- The-----

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COMMISSIONER: He said what he meant by that. He said it was an inadequate - he agreed it was an inadequate and unsafe service.

MR McDOUGALL: I propose to explore that with him, Commissioner. What did you mean by a lower level of service?-- The level of service you can provide depends upon the level of expertise that you have plus the back-up facilities to provide that service. If you have somebody who can provide a full specialist level service, you provide a service at that level. If you don't have specialist level service, then you provide a service within the capabilities.

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COMMISSIONER: Can I just understand what you mean by that? You agreed with me yesterday that the level of service which was provided with these two Drs Krishna and Sharma being obliged to perform the work that they did unsupervised was inadequate and unsafe. You don't resile from that now?-- No, the-----

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I just want to know you don't resile from that now?

MR McDOUGALL: Perhaps if I could ask him more questions about it, Commissioner, it will become clear.

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COMMISSIONER: Do you mind if he answered my question first? Then you can carry on.

MR McDOUGALL: Thank you, Commissioner.

COMMISSIONER: Go on?-- The thing that I have a problem with that is that they were required to provide and they had the option of transferring patients if they felt it was outside their scope of service.

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Well, except for the reasons that Mr Farr put to you today and with which you agreed, that they were in a very difficult position, both of these doctors, weren't they?-- Yes.

But subject to that, assuming they felt obliged to do what they were told to do by Dr Naidoo, then it remained an inadequate and unsafe service, didn't it?-- Certainly remains inadequate and again I have trouble with the word safe

because-----

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Well, if it is inadequate?-- -----no service is safe.

Well, I put to you yesterday - put to you yesterday that my definition of unsafe was that it had reached a standard of lack of safety which no reasonable supervisor should reasonably tolerate?-- That's wording I find difficult to relate to.

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Well, what I am saying is that the standard is so low that a reasonable person in control of that service should have said, "This is so inadequate and unsafe that it should be provided no longer." Do you agree it had reached that point?-- I have difficulty in thinking of it in that terms.

See, one concern that I suppose I have - and I should put it to you frankly - is that one possible conclusion is that you were more concerned to provide a service which might nevertheless be inadequate and unsafe than to provide no service at all?-- That's - my - my response to that is we have no choice but to provide no service because it is impossible to provide no service.

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Well-----?-- That the problem is to provide a service-----

I am talking about elective surgery, you understand, not emergency surgery?-- Yes. With elective surgery, the vast majority you have the choice.

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Yes. And that's the point I am making?-- Yes.

Well, can I have your response to that? Were you more concerned to provide elective surgery service which, in consequence of the matters we have discussed, was inadequate and consequently unsafe, than to provide none at all?-- No, that was not my belief of what was the situation at the time. The majority of the elective surgery was performed by Dr Naidoo, who I believe was performing - providing an adequate level of service.

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Buy that's not-----?-- The elective surgery performed by Dr Sharma and Dr Krishna was of a minor nature.

That's not correct, is it? If you look at their scope of service, they performed some quite complex orthopaedic surgery, according to Drs North and Mullen?-- Yes. The complexity of some of the operations that maybe on that elective list, which I don't have in front of me at the moment, a couple of the outcomes it had become evident that suggest assessment of their competence to do those may have been inadequate.

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Yes, well I won't press you any further on that. Mr McDougall, you go ahead.

MR McDOUGALL: All of the questions that the Commissioner has asked you have been qualified by the proposition that he is

only referring to elective surgery. Do you understand that?--
Yes.

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Could I just explore that a little with you? It is the case, is it not, that apart from a number of particular areas, for example joint replacement and similar major surgery, the great majority of the elective surgery arises out of someone presenting at the emergency department, does it not?-- The majority of our elective orthopaedic surgery is as a result of presentations to the emergency department. Categorisation of elective surgery versus emergency surgery is a little bit of a grey area, but certainly a patient who comes in who doesn't need urgent surgery categorises an elective surgery patient. If you come in, you had an operative procedure done as an emergency and then you come back for further surgery, whether that be planned or due to some complication, that is classed as elective surgery. So the majority of our elective surgery, with the exception of the joint replacements, does arise through the emergency presentations.

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There is also other elective surgery performed at the hospital generally upon the specialists' private lists?-- Yes.

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Now, we have heard from Dr Krishna that he would never perform surgery he did not feel comfortable with performing, and we may also have heard from Dr Sharma, though I can't immediately bring it to mind. We have also heard from Dr Naidoo that he was confident that Dr Krishna and Dr Sharma would make careful decisions as to what surgery they would perform and what they would not perform. And we have heard that in circumstances where they were the only people available and they weren't comfortable with performing the surgery, they would refer it on - to transfer the patient. Is that how you understood the situation to work in the orthopaedic department?-- Yes.

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And in those circumstances the performance of the surgery that Dr Sharma and Dr Krishna did perform was performed, so far as you are aware, safely, based upon what you were told by Dr Naidoo?-- Yes.

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So, when the Commissioner refers to the surgery - the situation being inadequate and unsafe, it may well be, may it not, that the service provided by the hospital was inadequate in that people had to be referred elsewhere in circumstances where they shouldn't have been had the consultant been available to perform the surgery?-- Certainly the service is inadequate in having to refer patients out, that the facility does have the - the equipment, the ability to treat if we had staff.

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And that doesn't necessarily lead to the conclusion that the surgery that was performed at the hospital was unsafe, does it?-- No, that does not.

I come back to first question I asked you when I got on to the subject. Does that mean or is that what you mean by the need to provide a lower level of service in circumstances where Dr Naidoo is not present perhaps when he should have been?-- Yes, that will be a good way of defining it.

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COMMISSIONER: I don't mind you leading your own witness, Mr McDougall, but it does affect the value of his answers.

MR McDOUGALL: Very well, Commissioner. I will move on, in any event. You have addressed the report of Dr North and Dr Giblin in your statement at some length. Is there anything else you wish to add to your comments in relation to that report?-- One concern that I have had come to light since the report is that one of the investigators nominated by the Australian Orthopaedic Association was a teacher, a mentor and a referee for Dr Mullen, whose complaint it was, who was significantly critical of the service that was being provided, which does cause a perception of bias.

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If I just address that criticism of Dr Mullen about the service, it was the case, was it not, that Dr Mullen had a deal of animosity towards Dr Naidoo?-- Certainly their relationship was not good.

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Have you any idea why they didn't have a good relationship?-- It's difficult to know just why their relationship was not good. Communication skills between many surgeons leaves a lot - a little bit to be desired. Dr Naidoo was the senior more experienced person in town. A new person comes to town, sometimes has a little bit of trouble finding their way around and establishing themselves in their credibility, plus there was one other thing that Dr Mullen stated, that - at one stage was that if Dr Naidoo wasn't here he would be able to provide a good service as a Director of Orthopaedics.

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COMMISSIONER: Doctor, you mentioned Dr Naidoo's difficult personality. Did he have a good relationship with any member of the staff? He didn't have a good relationship with

Drs Sharma or Krishna. That's correct, isn't it?-- Certainly appears that there was significant problems with Dr Sharma and Dr Krishna.

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And he didn't have a good relationship with the nursing staff?-- I would expect the majority of staff - I can't speak for all staff, but the majority of staff he did not have a good relationship with.

Thank you.

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MR McDOUGALL: Thank you, your Honour. Now, how often would the Hervey Bay Hospital be in a situation where there were - if someone presented at the Accident and Emergency Department there would be no bed? The hospital was full, in other words?-- That was a rare occurrence until after our orthopaedic service closed.

All right. You are shown some documents yesterday by my learned friend, Mr Devlin for the Medical Board, relating to - and by Counsel Assisting, I recall - relating to the area of special need registration of both Dr Sharma and Dr Krishna. Without having to put the documents up on the screen again, were the terms used by you to describe supervision terms commonly used by Queensland Health, in your experience, to describe levels of supervision?-- They're certainly terms similar to forms - the forms that I have seen that have been used in the district prior to my time. I do not get to see the forms used by people working in other facilities.

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All right. Just a couple of other short issues. Dr Naidoo has said in his statement that you were aware of his medical condition of depression that required his hospitalisation. Are you able to recall whether Dr Naidoo ever told you his medical condition was one of depression, or was it some other medical condition?-- Dr Naidoo told me that he suffered from ulcerative colitis, that there was several times when he stated he was in hospital being treated for ulcerative colitis. Around about Christmas time last year I became aware of his marital difficulties and he did not state he was suffering from depression but it was clear at that stage that he was quite upset and, for want of better words, acutely depressed.

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Excuse me, Commissioner. Thank you.

COMMISSIONER: Thank you. Mr Andrews?

MR ANDREWS: I have no re-examination, Commissioner.

COMMISSIONER: Thank you, doctor. You are excused from further attendance?-- Thank you.

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WITNESS EXCUSED

COMMISSIONER: Dr Keating is next, is he? I will take a short break now.

THE COURT ADJOURNED AT 11.08 A.M.

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THE COMMISSION RESUMED AT 11.25 A.M.

COMMISSIONER: Mr Douglas?

MR DOUGLAS: Yes, Commissioner. Commissioner, I call Dr Keating.

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COMMISSIONER: Yes.

DARREN WILLIAM KEATING, RECALLED AND RESWORN:

EXAMINATION-IN-CHIEF:

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MR DOUGLAS: Dr Keating, is your full name Darren William Keating?-- Yes.

And you reside at an address known to the Commission?-- Yes.

Thank you. You are a duly qualified medical practitioner?-- Yes.

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Thank you. You are an employee of Queensland Health?-- Yes.

You were awarded the degrees of Bachelor of Medicine and Bachelor of Surgery from the University of Melbourne in 1986?-- Yes.

You were awarded a Masters degree in Health Service Management from Charles Sturt University in 2001?-- Yes.

Following formal appointment to that position, on the 14th April 2003 you commenced work as the Director of Medical Services in the Bundaberg Health District?-- Yes.

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Throughout your career prior to Bundaberg, you worked in general practice and in public health in various States of Australia?-- Yes.

You also undertook military service but in a medical

capacity?-- Yes.

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You served overseas on army service in Somalia, East Timor and in Germany?-- And also Bosnia, yes.

Thank you. Prior to commencing in Bundaberg, you had undertaken over the years a range of courses pertaining to and in an endeavour to enhance your knowledge of health planning?-- Yes.

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You list those in your curriculum vitae?-- Yes, that's right.

In 1993 you were awarded the Geoffrey Harkness award for the most outstanding personal contribution to the Royal Australian Army Medical Corp?-- Yes.

At the request of the Commission and with the assistance of your solicitors, you have prepared a statement?-- Yes, that's correct.

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That statement has been signed by you?-- Yes, it has.

That signed statement has been provided to the Commission?-- Yes, it has.

Commissioner, a number of those present will have copies of that statement but in an unsigned form. The form of statement which has now been signed is a facsimile of that document. I say that for the benefit of those beside me and behind me.

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COMMISSIONER: Thank you.

MR DOUGLAS: Dr Keating, is the content of your signed statement true and correct to the best of your knowledge and ability?-- Yes, it is.

Commissioner, I tender that statement.

COMMISSIONER: That will be Exhibit 448.

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ADMITTED AND MARKED "EXHIBIT 448"

MR DOUGLAS: I can indicate, Commissioner, as a matter of administration, now that the document's been tendered, I have arranged for my staff to make a number of additional copies of the statement and I have also arranged for some electronic copies to be prepared, and they will be distributed at this point in time to assist anyone else who wishes to follow the evidence.

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COMMISSIONER: All right.

MR DOUGLAS: Thank you. Dr Keating, I want to ask you a number of questions obviously about your statement. Please if

at any time I am being unclear or you need me to ask the question again, asked in a different way or repeat the question, would you please tell me?-- Certainly. 1

Thank you. If I am going too quickly would you also please tell me and I will slow down?-- Certainly.

Can I ask you first about Dr Jayant Patel. Is it correct to say that you first met Dr Patel in April of 2003 upon you assuming your duties at Bundaberg?-- Yes. 10

You would have met him along with most of the other staff then working at Bundaberg?-- Certainly the medical staff at the - staff at the time, medical staff.

Yes. When was the last time that you saw or spoke with Dr Patel?-- It would have been in late March 2005 prior to going on leave - prior to me going on leave.

What role was he then performing at Bundaberg?-- At that stage he was still the Director of Surgery. 20

Did you go on leave in late March 2005 for about a week?-- Two weeks.

When you returned from leave, he was no longer working at the Bundaberg Hospital?-- That is correct.

Have you had any contact with him since by e-mail or by telephone?-- I have had no contact with him since that time. 30

You haven't received any message from him or anything of that nature?-- I have received no message. I believe he rang up one of the staff that works for me. When she went to forward that phone call, he hung up.

When was that, Dr Keating?-- Some time in April, prior - after I came back from leave and prior - after I came back from planned leave before going on leave and before the end of April. 40

Was it after the meeting attended by Dr Buckland and the Minister on the 7th of April 2005?-- I can't recollect an exact date.

Can I take you to the 14th of April 2005. That's about a week and a half after you returned from leave, isn't it?-- Yes.

By that date, 14th April 2005, a Board of Inquiry had been appointed, to your knowledge, by the Minister to investigate matters at Bundaberg Hospital?-- I----- 50

If you can't be sure, please say so?-- I can't be sure. I do remember that the Minister had appointed the interim review team but I cannot remember if the inquiry had been announced at that time.

All right. And you knew that the focus of that inquiry would

be upon Dr Patel?-- Sorry, which inquiry?

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The inquiry appointed by the Minister?-- Sorry, the internal - the inquiry, the previous inquiry headed by Mr Morris?

Yes?-- Yes.

No, I'm not speaking of Mr Morris. I'm sorry, I thought you were speaking of something else. Do you recall there was an inquiry team appointed by the Minister manned by Dr Mattiussi and others?-- I heard - yeah. Sorry, I understood - yes, he announced that and I understood that team was appointed by the Director-General and Dr Buckland and - yes.

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Would you look at page 242 of the bundle of documents attached to your statement. 242. It is Exhibit DWK73 to your statement?-- Yes.

Thank you. That's a document which bears your signature?-- 243 doesn't have my signature, it has my signature block.

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I see. 242, are you on page 242?-- Sorry, 242, yes, 242, yes.

It bears your signature?-- Yes, it does.

It's dated the 14th of April 2005?-- Yes, it is.

It's a memorandum which you caused to be sent to all medical staff, Director of Pharmacy, Manager of Medical Imaging, Elective Surgery Coordinator, and other sections of the Bundaberg Hospital?-- Yes.

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You intended that to be sent, in effect, to all medical and related staff at the Bundaberg Hospital on that date?-- I intended it to be sent to the medical and those other staff outlined there. It wasn't to all staff but it was to all staff as outlined on the memorandum.

You were the author of that document?-- Yes, I was.

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I suggest to you that included in that document is your expression of shock at - and to use your words "revelations in the media about Dr Patel's registration in the US"?-- Yes, that is correct.

It was your intention to represent to any reader of that document by using those words that you had learned of registration irregularities in the United States pertaining to Dr Patel from reading the media?-- No. My intention was that - it was to acknowledge this had been a revelation in the media and that - you know, obviously I read the media, just as other people read the media.

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COMMISSIONER: And you were shocked at the revelation which was contained in the media. That's what it says there?-- Yes, that I was shocked.

You were shocked when you read that?-- No, I - I was - I was more - I was - obviously the people were shocked and - you know, the staff were shocked and I was understanding of that as well.

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You say, "I am absolutely shocked"?-- I am absolutely shocked that I was also - yes, I was shocked at the detail that was provided in this media at that time as well.

MR DOUGLAS: Were you intending to be truthful when you wrote this memorandum?-- Yes, I was.

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Do you otherwise tell us in your statement that you discovered the irregularities concerning Dr Patel eight days earlier on the 6th of April 2005?-- Yes, I did.

You did so by undertaking your own search on the Internet?-- Yes, I did.

You did so on your personal computer at home?-- Yes, I did.

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Did you make a copy of the Internet search that you undertook on the 6th of April?-- No, I did not.

You were obviously interested enough to pursue those inquiries concerning Dr Patel to the point of making an Internet search?-- Yes.

You would have closely examined the Internet search?-- Yes.

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Once you found that there were irregularities, you would have carefully pursued it in the course of surfing the Net to ascertain matters pertaining to Dr Patel?-- The - what I found was that there was minimal detail related to the listing under the Oregon Medical Board, but there was more detail in relation to the - at the New York Medical Board site.

Tell the Commissioner what you recall you read about Dr Patel in the course of this internal search on the 6th of April?-- I read that he had a restriction on his licence in Oregon.

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COMMISSIONER: And why?-- It related to - I can't remember - I can't remember, it just said he had a restriction, that he had - he'd had a meeting with the Oregon Medical Board, I think there may have been a report provided to them by his former employer, and that as a result of that restriction had been placed on his medical - on his medical practice in Oregon.

And those restrictions were?-- No, they didn't - you had to pay extra money to get those details, but when I went to the New York - New York Medical Board there was a lengthy - there was a lengthy letter which was - it carried his signature and it had far more detail related to the restrictions that had been placed on - well, sorry, the restrictions being placed on him - sorry the, situation of restrictions being placed upon him and the fact that he'd agreed to surrender his medical licence in New York.

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MR DOUGLAS: The New York site went into some detail in describing that he had been undertaking surgery in a manner which was clinically undesirable, to use a neutral term?-- Yeah, I - yes, they used - yes, I would agree with those terms.

What do you recall the words were that were used?-- I recall the words "negligence" and "gross negligence", and that it related to specific operations, including liver resections, pancreatic operations and ilio and anal anastomoses.

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You undertook this search on the evening of the 6th of April 2004?-- Yes.

Did you know at that point in time - that is on that evening - that your Director-General, Dr Buckland, and your Minister, Mr Nuttall, would be attending the Bundaberg Hospital the next day?-- I was aware they were coming the next day.

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Had that been arranged some time on the 6th?-- I can't recollect when that was arranged, but it was arranged in the preceding - preceding days.

What motivated you to undertake this Internet search?-- I'd become increasingly concerned about Dr Patel.

What had increased your concern? What factual matter had increased your concern?-- Around the Christmas/New Year period after the death of Mr Kemp's I sat down and wrote down my recollection of a number of situations that had involved Dr Patel. I also made further inquiries with some staff and continued to think about these things, and I could see where there was - to put my own words, where there is smoke, there is potentially fire, and I suppose there was increasing a number of people making concerns which they - bringing concerns forward which seemed to have some similar ongoing themes.

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I will take you - sorry, I interrupted you. Please keep going?-- And in so doing I formed the opinion that the hospital should not in - should not have Dr Patel on staff on a longer term. As then once this situ broke in the media through the release in Parliament by Mr Messenger of concerns provided to him and thereafter Dr Patel left, I thought, well, based on this where there's smoke, there's fire situation, if anything else has come up, you know, is there - does he have any history, you know, does he have any history in the United States. So it - my curiosity had been-----

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Piqued?-- Yes, and I knew that the - in the United States they were - the Medical Board - the Medical Boards there are usually far more open in that - releasing information, and so I - initially I just searched under "Jayant Patel", and going under "Jayant Patel" there's large number of - shall we say hits come up under an Internet search. I remembered his middle initial was M and that's where I was able to find something. When I found - saw "Jayant" and "Patel" in Oregon,

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I remembered that's where he said he'd come from and that's - so I went there and I remember he said he worked in New York as well.

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You said a moment ago to the Commissioner that where there's smoke, there was - there might be fire, and thereby you wanted to pursue matters further. Do you recall saying words to that effect?-- Yes, I did.

You'd been choking on the smoke since Toni Hoffman's complaint was made on the 22nd of October 2004 about six months earlier; isn't that so?-- Sorry, I don't understand what you mean by "choking"?

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I will come to that it later. Can I ask you to maintain your focus on the 6th of April 2005. The Minister and Dr Buckland arrived the next day, the 7th of April?-- Yes.

Is that so? Do you recall what time of day it was that they arrived? I am not saying exact time?-- I think it was mid-afternoon - mid-afternoon.

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Did you have an opportunity to speak with either of them other than exchanging pleasantries before they addressed the meeting of staff that day?-- No, I did not.

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Did you make any attempt to contact Dr Buckland prior to him attending at Bundaberg that day?-- No, I did not.

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Did you tell anyone - I'm sorry, I'll start again. You informed Dr Buckland that day on the 7th of April of the results of your search?-- Yes, I did.

I'll come to that, but before I do, did you tell anyone else of the results of your search the previous evening prior to informing Dr Buckland of that fact on the 7th of April?-- Yes, I did.

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Who did you tell?-- My wife.

Was she the only person?-- No, she was not.

Who else did you tell?-- I spoke to Jennifer Kirby of the DQDSU, the District Quality and Decision Support Unit.

COMMISSIONER: Sorry, what?-- Jennifer Kirby from the DQDSU, District Quality and Decision Support Unit.

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Mmm-hmm.

MR DOUGLAS: Where was she based?-- Bundaberg Base Hospital.

What did she do with the information to your knowledge?-- I had already that night once I realised the significance of the information, I was initially uncertain what to do, I decided to - I realised then that I believed that it needed to be handed to the senior executives of the organisation as soon as possible. I realised that Dr Buckland was coming the next day and that I would be sure that I had an opportunity to speak to him and pass that information on to him, and I explained that to - I said that would be my course of action and I explained that to Jennifer Kirby.

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Thank you. Did you tell anyone apart from your wife and Jennifer Kirby before informing Dr Buckland?-- No, I did not.

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Did you make any note of the conversation you had with Dr Buckland?-- No, I did not.

Could you tell the Commissioner to the best of your recollection what you told Dr Buckland, including if you can recall, the detail of your recitation to him of what was contained in the Internet search?-- It was after the Minister and Dr Buckland had finished their official duties and I think the Minister had a private engagement, there was a time period where Dr Buckland was - was free, I accompanied him to the cafe at the hospital and there was another staff member there from - I think it was the Minister's staff. I said to Dr Buckland, "Can I have a quiet, private word?" We then stepped away from that cafeteria and I explained to him that I had conducted that Internet search that night and that I'd looked at both the - at Oregon and New York and that New York had more details and related the areas of concern. I think the words used were there was negligence, gross negligence I had

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used and I outlined the three areas, being the peritoneal anastomosis, the pancreatic operations and liver resections, and I explained that to him. I also, I remember he raised his eyebrows when I used the word "gross negligence". I then also said that obviously as these restrictions, and I think I'd looked at his medical registration in the - at the Medical Board in Queensland and he put down that he had no - any restrictions on his medical practice and I said to Dr Buckland that obviously A, this was important information, and B, this information had to be passed on to the Medical Board. He assured me that he would do that.

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Can I ask you a couple of questions arising out of what you've just said. Between completing your Internet search on the 6th of April in the evening and that conversation with Dr Buckland, you had taken time to look at some documents?-- I just quickly looked at his pers file.

You say his pers file; do you mean his personnel file or human resource file-----?-- His personnel file.

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-----held by Bundaberg Hospital?-- Yes, that's correct.

And on that file, there was included documents from the Medical Board which had been completed by Dr Patel?-- There was a copy of his application for registration as a medical practitioner and in that application, the individual must write down whether they have - there are some boxes and - questions and some boxes, the individual has to, yeah, declare whether they've got any restrictions, and he said no, he had no restrictions.

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While I'm dealing with the 7th of April, can I ask you some questions now about the staff meeting that occurred, attended by Dr Buckland and the Minister that day in Bundaberg?-- Yes.

You attended that meeting as well?-- Yes, I did.

Do you know whether anyone took any minutes of that meeting?-- I do not believe there were any minutes taken of that meeting.

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Were you present when Dr Buckland and the Minister gave evidence with respect to what transpired at that meeting?-- No, I wasn't, I wasn't present here for personal reasons.

How would you describe the mood of the meeting?-- Initially the staff, the staff were very keen to hear what the Minister and the Director-General had to say about the situation. After it was announced that there would be no further investigation, the mood changed.

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Who said what in relation to further investigation as best as you can recall?-- As best as I can recall, Dr Buckland, but I also heard the Minister say it as well, the problem was the Minister did a series of media interviews prior to this meeting which I was attending and certainly also said it then as well, he said that then and then I'm not sure if he said it at the meeting with the staff but I do recollect Dr Buckland

saying it.

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Well, let's do it in sequence. Let's start with Dr Buckland and focus on what was said at the meeting. Allowing for the difficulties with memory of an event that occurred six months ago, what is your best recollection of what Dr Buckland said to the meeting?-- Dr Buckland announced that the investigation had been stopped.

You speak of the investigation?-- Sorry-----

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Are you speaking of the audit investigation by which you knew had been undertaken by Dr FitzGerald?-- Yes, that's right.

Thank you. Could you continue now please?-- Yes, it was the audit investigation had been stopped because Dr Patel was unavailable to provide his side of events or his version of events or at least put his point as regards the concerns that Dr FitzGerald had been working on and that was basically looking at kind of providing natural justice, I think what the achieve - a due process and natural justice.

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Was that your interpretation?-- No.

Or do you recall him saying words to that effect?-- I recall him saying words to that effect.

And you understand him saying words to that effect referable to giving due process or natural justice to Dr Patel?-- Yes, that's right.

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Do you recall Dr Buckland saying anything else at that meeting to those present?-- I remember him answering questions from the staff, some of the staff asked questions.

Do you recall the substance of any of those matters?-- I think there was one question asked about what would happen now.

Do you recall his answer?-- Yeah, I think he said that certain recommendations, that some recommendations from an organisational system perspective would be provided to the district manager and the executive to review and implement.

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Can I come to the Minister now? What is your recollection of what Minister Nuttall said to those present at the meeting?-- He reminded the staff that he'd been there on a number of occasions, and that he was not happy being there or the situation which brought him to Bundaberg this time, it was not one - it was not one that he liked or was one of his choosing. He was there to provide support to the staff and say that, yeah, this was a significant situation which needs to be - but that the vast majority of people working there were doing-----

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You were saying the vast majority of people, is that what you said?-- I said the vast majority of people, it may not be the exact words he said but, you know, the vast majority of staff there, but unfortunately we had the situation with Dr Patel,

the situation with Dr Patel but, you know, the staff were there to try and get on and do their job and that there was going to require a large amount of time and effort to repair relationships with the local community.

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This is what Minister Nuttall is saying?-- To reestablish the trust with the local community.

This is what the Minister's saying?-- Yes.

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Thank you?-- And I do remember him saying that he, earlier that day that he'd been to Springsure to open up a multipurpose health service and that there was a contrast in what he'd done that day.

Do you recall anything else the Minister said to the assembled throng?-- No.

Now, on that day, or by the end of that day, had you read the audit report of Dr FitzGerald?-- No, I didn't, no.

20

Had you read any draft of that report?-- No, I had not.

You hadn't been provided with any draft at all?-- No, I had not.

Had you had any discussion with Dr Fitzgerald on or prior to that day as to what might be contained in that report by way of conclusions?-- When he came to do his visit in February, I think 14th of February, I think, in the afternoon we had - we being Peter Leck and myself having - I think Linda Mulligan there for some of it, a hot debrief I think was the word, was the terminology used of Dr FitzGerald's findings. No, his initial impressions, his initial impressions, but he did acknowledge that he would have to go away and get further opinion and further data before he could conclusively put out his recommendations.

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Did you take any notes of what Dr FitzGerald said to you on that occasion if mid February?-- I didn't take any notes.

40

Do you recall whether any other person present took notes of what was said by Dr Fitzgerald on that occasion?-- I don't recollect if anyone did.

Could you tell the Commissioner now please your best recollection of what Dr FitzGerald said in that hot debrief as to his view of likely conclusions or provisional view of conclusions?-- He was concerned - there were several aspects that concerned him: that there had been a number of operations performed by - outside of what he believed was the scope of practice of the hospital and that the clinical and privileging process for surgeons including Dr Patel had not been done and he suggested that that be done as soon as possible. He also did note that there was a number of personality issues which had been brought up and he said that this has been particularly related to staff from ICU, but they had also talked to staff outside that but what he had found was it was

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predominantly from ICU and not - there were some concerns but they certainly weren't as large from outside the ICU department.

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The ICU department was the Intensive Care Unit-----?-- Yes.

-----at Bundaberg Hospital?-- Yes, that's right.

Thank you. Do you recall him saying anything else in that hot debrief?-- I recall him saying that he would have to - he was unsure whether he would have to refer him to the Medical Board being Dr - sorry, having to refer Dr Patel to the Medical Board, that he would have to go away and receive further opinion and that in fact he had asked for a number of files, case files of medical records of patients to be photocopied and that he would also have to go away and seek some further data. We had to provide some data to him. He felt that we needed - we could improve the quality of data that we were collecting and - or the range of data that we were collecting. Yes, and we also talked about some of the personalities from the medical staff in particular as regards this situation as well.

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Did Dr FitzGerald say anything else about his provisional findings in this discussion in mid February?-- Not that I can recollect.

Did you have any subsequent discussion with Dr FitzGerald between that date and the 7th of April 2005 with respect to the substance of his findings?-- No, I did not - sorry, can I just answer one thing? One other thing he did say that he would send us a draft copy of his report to review the facts and we didn't receive that. That was the only other thing that I remember him saying, and we never received that.

30

Are you saying you did or you didn't?-- We did not, we did not receive that.

When did you first receive a copy of Dr FitzGerald's audit report?-- In late April 2005, after I'd gone on leave, I asked the then Acting District Manager for a copy of that and was provided with a copy which was then provided, but it was interesting that it did not have the back sheet with the data on it.

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Do you mean the annexure with the data in it?-- Yes.

Thank you. Prior to Dr FitzGerald leaving Bundaberg in mid February following the hot debriefing, did you offer to him your views with respect to the competence or clinical judgment of Dr Patel?-- I had spoken - I spoke to him in the morning of the 14th of February where he'd asked me about Dr Patel.

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Did you make any notes of the conversation which you had with Dr FitzGerald at that time?-- No, I did not.

Do you recall the substance of what you told Dr Fitzgerald about Dr Patel on that occasion?-- That he was a loud, brash,

arrogant or at least very confident, potentially someone who could be interpreted as an arrogant American surgeon, that he had potentially polarised opinion about him in the hospital and that he - his manner and his attitude had definitely upset people and that he certainly upset the same people on a number of occasions and sometimes didn't realise that what he'd done, but in so doing they were very unhappy with how they'd been treated. I said to him I believe that he was a good, you know, a reasonably good surgeon based on the information that was being provided to me. He also asked me about the local medical politics. It was a relatively short meeting with Dr FitzGerald.

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In that conversation or exchange with Dr FitzGerald, did you tell Dr FitzGerald anything of a deleterious nature about the competence or clinical judgment of Dr Patel as a surgeon?-- No, I didn't.

Is there some reason for that?-- He was there to investigate that and those opening questions I felt were very general and I believe that Dr FitzGerald would ask further questions - well, would ask further specific questions about that as well.

20

Of you?-- Yes, yes.

You were the Director of Medical Services, you were the perfect person to be an oracle to channel information to Dr FitzGerald undertaking this audit investigation about the competence and clinical judgment of Dr Patel; do you agree?-- I do agree.

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And you had formed views about his competence and clinical judgment by mid February 2005, hadn't you?-- Yes, I had.

I'll come to that later.

COMMISSIONER: And you told him that he was a reasonably good surgeon?-- I said reasonable, good to reasonable, reasonable to good surgeon based on the information that was being provided.

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MR DOUGLAS: Thank you, Commissioner. It is more convenient if I deal with it at another point, if I may?

COMMISSIONER: Yes, that's all right.

MR DOUGLAS: I'll come to it soon. Can I take you back please to your memorandum of 14th April 2005, it's page 242 of the bundle of your statement?-- Yes.

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Thank you. In the first paragraph of that document you express your apologies, and I quote you, "For the hurt and distress that many have suffered during this time"; I think I've quoted you correctly?-- Yes.

Were you directing or intending to direct that apology to staff or patients or both?-- It was directly - the memorandum is addressed to staff.

When you say "this time", do you mean the period of time that Dr Patel was employed as a surgeon at the Bundaberg Hospital?-- No, I - no.

Well, what time were you referring to?-- I'm talking particularly after the release of the information in Parliament and following the visit by the Minister and the Director-General, the staff felt that their efforts about bringing - about bringing these matters to notice appeared to have reached a roadblock and they weren't sure what was going to happen and they wanted some acknowledgement of their efforts, and if what they'd done and that, you know, it had been - and that it had been all for nothing, they potentially had the feeling that it was all for nothing and so at this time the executive, I believe the executive had some responsibility to at least acknowledge their concerns and to try and show that we were understanding what they were saying - what they were thinking and that's-----

You go on to - sorry, I interrupted you, go on?-- And that's what I tried to express in this memorandum.

Thank you. You go on to express in this memorandum, and I quote you again, that you "acknowledge the efforts of all the health care professionals in bringing forward their concerns about him."; I think I've quoted you correctly?-- Yes.

"Him" is obviously Dr Patel?-- Yes.

And the "health care professionals" referred to there are the health staff who had made complaints or volunteered information which was critical of Dr Patel prior to the date of this memorandum?-- Yes.

And just for the sake of completeness, you go on to say, and I quote you again that you, Dr Keating, "could only learn from this most unfortunate episode."; I think I've quoted you correctly again, have I?-- Yes.

Thank you. Did you express matters that way, Dr Keating, because you wished to acknowledge that staff - I should say - I'll start again. Did you express matters that way because you wished to acknowledge to staff that you, with the benefit of hindsight, ought to have acted earlier upon the information that staff brought forward critical of Dr Patel?-- Sorry, can you just repeat the question?

Yes, certainly. Did you express the matters the way you have expressed in that memorandum because you wished to acknowledge that your staff, that with the benefit of hindsight, you, Dr Keating, ought to have acted earlier in respect of Dr Patel on the information that was brought forward by staff which was critical of him?-- I, no - no, I was saying that in my position as Director of Medical Services, I had to review what had been done and what had or hadn't been done and that - or yeah, all the necessary information needed to be, you know, hadn't been available - at that stage all the necessary

information about Dr Patel's previous history was not available and therefore, as I said, that's where I said where there was smoke, there was fire, the smoke and fire situation I believe it was a very large - a large amount of smoke and a small amount of fire, and potentially there was probably more fire than I had given credence for, and I also had belief that there was some significant personal conflict situations combined with his clinical situation and I'd probably given greater weight to his personality difficulties than with his clinical difficulties.

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Members of staff at Bundaberg Hospital had been making complaints periodically about the conduct of Dr Patel from May 2003?-- That's correct.

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That's the month after you arrived?-- That's correct.

I suggest to you that at all times, at all times with one exception and that is what occurred after the death of Mr Kemp in December 2004, you always resolved those complaints in favour of Dr Patel?-- I would disagree with that.

20

You know the issue involving Dr Kemp or Mr Kemps, I should say, that I'm referring to, don't you?-- Yes, I do.

In December 2004 Mr Kemps died?-- Yes, he did, unfortunately.

Unfortunatly. And after that, you put a preclusion upon Dr Patel in relation to one aspect of his surgery, didn't you?-- Yes, I did.

30

And what was that?-- That he was to perform no further oesophagectomies at the hospital. That was also followed up by some other changes later.

Dr Patel continued to work in this hospital to your knowledge up until the time you went on leave in March 2005?-- Yes, he did.

And at no time did you seek - other than in the respect which I just identified involving Mr Kemps' death - to place any restriction upon him in relation to his clinical practice as a surgeon?-- The first restriction was the - was no further oesophagectomies. That was then followed up by a restriction on all cases - all elective surgery cases requiring care in the Intensive Care Unit at the Bundaberg Base Hospital.

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And when did you do that?-- I think it was in a meeting of about the 13th of January.

I'll come to that as well. At this point, Dr Keating, I want to put a number of general propositions to you and I do ask you to consider them very carefully before you answer; do you understand? Thank you. I suggest to you that at all times after you commenced as Director of Medical Services at Bundaberg, you knew that any shortcoming in Dr Patel's surgical skills or judgment could adversely affect the safety and welfare of patients he was treating at the hospital?--

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Sorry, was it any shortcoming in his-----

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I'll repeat the question. I suggest to you that at all times after you commenced as Director of Medical Services at Bundaberg, you knew that any shortcomings in Dr Patel's surgical skills or judgment could adversely affect the safety and welfare of patients he was treating at the hospital?-- No, I did not believe that.

You must have known that? I mean, surely you knew that if one of your own surgeons had any shortcomings in surgical skills or judgment, that that most probably would have an adverse or deleterious effect upon the health and welfare of people at the hospital, that is, patients at the hospital?

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COMMISSIONER: That's a simple proposition, it seems to me to stand to reason, doctor?-- If he has a shortcoming, it may have a potential to have a deleterious effect, but it would not necessarily lead to a deleterious effect or outcome.

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MR DOUGLAS: I did say "could" doctor, could effect the safety and welfare of the patients he was treating at the hospital?-- Therefore I would agree with the proposition. There was also, if you're aware of this situation, you can put restrictions around it and/or change how this process was occurring. I'd also say that, you know, any surgeon or - sorry, any medical practitioner may have deficiencies in their practice as well.

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It is a simple enough proposition, I suggest to you, that a surgeon is a person who, at a hospital like Bundaberg, is performing a salient role in relation to the surgical care and treatment of patients?-- Yes, they are.

Performing at a senior level, correct?-- Yes.

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And with the circumstances that existed at Bundaberg, he was the senior surgeon, in effect, in day-to-day practice?-- He was the senior general surgeon.

Yes. He was the senior general surgeon? You agree?-- Yes, I do.

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And at Bundaberg Hospital, whilst Dr Patel was there, there was, in reality, to your knowledge, no peer who could pass some objective view on what Dr Patel was doing in the course of his surgical practice on a day-to-day basis at the hospital?-- I believe that Dr Gaffield could provide some input into that. I also believe that the other surgeons, the visiting medical officers in surgery, could provide that. Also the - and the anaesthetists, Director of Anaesthetics in I CU and the anaesthetists could provide some of that, but from an immediate minute to minute, no.

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It is not just minute to minute. The reality is that Dr Patel, I suggest to you, was one of two general surgeons providing surgical services at Bundaberg, the other being Dr Gaffield?-- Yes, they were.

And of the two of them, it was readily apparent to you that Dr Patel was treated as the more senior?-- He was - yes, he was treated as the more senior.

And he certainly acted like the more senior?-- Yes, he did.

In his manner?-- Yes, he did.

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You observed that?-- At different times, yes.

So there was no peer, I suggest to you, such as might have existed, say, at a metropolitan hospital where a number of general surgeons might be treating patients who were on the list for surgery and treatment?-- There was no - there was no peer on a minute-to-minute basis.

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Not just minute to minute, it is minute-to-minute, hour-to-hour, day-by-day, week-by-week while any particular patient was there for surgical care and treatment?-- That's correct.

I want to put some more general propositions to you. I suggest to you that during your two year tenure at Bundaberg Hospital, you were so focussed upon maintaining surgical services, by retaining Dr Patel to provide them, that you were prepared to overlook any information you received about his shortcomings in his surgical skills or clinical judgment?-- I

would disagree with that proposition.

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You say that you were prepared to carefully consider any information as to shortcomings, which was forthcoming so as to properly consider that in relation to Dr Patel's continued provision of services?-- Yes.

And as far as you were concerned, you fairly considered those, is that what you say?-- Yes.

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I suggest to you that your approach as Director of Medical Services at Bundaberg was to provide surgical services to the public, even if those services had to be provided by a surgeon with less than adequate surgical skills and judgment?-- I did not place patient safety secondary to provision of surgical services.

At no time did you do that?-- My thoughts and actions were aimed - focussed on that.

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Thank you. Could I take you, going just briefly to your memorandum of 14 April 2005 - again it is page 242 of the bundle - your attitude to Dr Patel was quite different eight days earlier, on the 6th April 2005, in comparison with the content of that memorandum of 14 April 2005. Do you agree?-- I - sorry, I don't understand what-----

Thank you, I will do it another way. Look at the previous page in the bundle, page 241?-- Yes.

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That's a document signed by you?-- Yes, it is.

It is dated the 6th of April 2005, eight days earlier?-- Yes.

And it is directed to all medical staff?-- Yes.

And you directed it to be distributed to all medical staff at the Bundaberg Hospital?-- Yes, I did.

And the subject matter was the resignation of the Director of Surgery, which was Dr Patel?-- Yes.

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He had resigned whilst you were on leave?-- Yes.

When you speak of the resignation there, what you were adverting to, I would suggest, is his resignation from an agreement that he had entered into, at your behest, to provide services as a surgeon at the Bundaberg Hospital from 1st April 2005 to 31 July 2005?-- No, I took it that he - yes, he had signed that agreement, but I took it that he had said that he would not take that offer up and that he would finish on the 31st of March, as he outlined on the 14th of April - correction 14th of January.

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He had already accepted your offer, had he not, to take up the position of surgeon working as a locum but on a full-time basis from 1st April 2005 to 31 July 2005?-- I had written to him after he had approached me. He approached me after his

written - his letter of the 14th of January saying that he wished to resign as of the 31st of March.

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I suggest to you you are making a mistake about that and I will demonstrate it to you later. But what in fact occurred was that you wrote to him in late December 2004 offering him a position for four years as a surgeon from 1st April 2005, but - he didn't accept that. But later, in late January 2005, you offered him a position as a locum to work for three months from 31 March 2005 and he accepted that on the 7th of February 2005? Does that accord with your recollection?-- As I said previously, he - after - he did not take - sorry, he did - he put in a letter of the 14th of January saying he wished to resign as of 31 March.

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It is best if I take you to the documents later?-- And he - and he then said - he approached me thereafter and said that he wished to take up a locum period.

And you offered him a locum period for three months commencing the 1st of April 2005; is that correct or incorrect?-- Yes, it is correct.

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You offered it to him in writing?-- Yes, I did.

And he accepted it in writing?-- Yes.

Come back to the memorandum of 6 April 2005. There is reference there to an internal letter. Do you see that?-- Yes.

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You drafted this document, didn't you?-- Yes, I did.

And the internal letter that you were intending to refer to there was a letter which Ms Hoffman, Ms Toni Hoffman, had written to Mr Leck, the district manager, and which was dated 22 October 2004?-- Yes.

And your belief at the time, that the memorandum of 6 April 2005 was drafted and distributed by you, was that that letter had been leaked to a Member of Parliament, Mr Messenger?-- That's correct.

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And that's what you were referring to in this memorandum?-- That's right.

It is correct to say that as at 6 April 2005 you knew that there was pending receipt of Dr FitzGerald's report, that is his audit report at Bundaberg. Isn't that correct?-- We were - yes, we were still waiting for it.

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It was due any time soon?-- Yes.

And you express in that document - and I quote you: "All medical staff at Bundaberg Base Hospital are very unhappy with the recent events leading up to Dr Patel's resignation." I think I have quoted you correctly?-- Yes.

Were you being facetious when you wrote that sentence?-- No, I was not being facetious, no. I was - it related to after the release - after this information had been tabled in Parliament, the uproar in the media, and thereafter how it was portrayed was that Dr Patel had not - had not had an opportunity to provide his version of events or respond to any form of report that was provided.

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I suggest you well knew that, as at the 6th of April 2005, there were considerable number of staff who had expressed significant disquiet about the clinical skills and judgment of Dr Patel?-- I had - was aware of the letter from Toni Hoffman, the letter of some concerns expressed about Mr Kemp's.

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Anything else that you were aware of, before I take you to it in detail, that you recall?-- There was a number of - you know, a number of situations, but I did not put them - I did not believe that they all led to a general view that he was incompetent.

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You speak in your memorandum of 6 April 2005 - and I quote you: "of the lack of natural justice afforded to Dr Patel so as to respond to the allegations"?-- Yes.

Thank you. Is it correct to say that at no time did you, prior to the 6th of April 2005, ask Dr Patel to respond to the content of the letter of 22 October 2004 drafted by Ms Hoffman?-- That's correct, I did not ask him to respond to that.

30

You had never given him a copy?-- I had not given him a copy.

You had never canvassed with him the content of that document at all?-- In a meeting - I think it was the 13th of January 2005 - with Dr Patel and Mr Leck, it was outlined that a letter had been received - it was outlined to Dr Patel that a letter had been received from Toni Hoffman and that as a result of that an investigation would take place and that Dr FitzGerald would be carrying out that investigation. He was not provided a copy of that letter, he was not provided with any details as regards the allegations/accusations in that letter, and he was actually very frustrated at the lack of information that was provided at that meeting.

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You chose not to provide to him any of the detail in that letter?-- I did not - that was not my choice to do that.

Whose choice was it?-- It was the district manager.

Did you discuss with the district manager, Mr Leck, whether you should provide to Dr Patel any of the detail in that letter, even in broad terms, so he could respond to it?-- I had discussed that with Mr Leck.

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What was your recommendation to Mr Leck about that issue?-- That as much information as possible could be provided - regarding the allegations could be provided to Dr Patel.

When did you give him that advice?-- Prior to that meeting.

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Prior to the meeting of the 13th of February?-- Sorry?

13th of January 2005?-- Some time prior to that, yes.

When you say some time prior to that, was it in January?--
Yes, I think it was.

As best as you can recall, what did you say to Mr Leck as to what your advice was about that issue?-- I was aware that Dr FitzGerald was likely to be doing the investigation and there was - there was an email - I received a CC copy of an email from Mr Leck which he'd written to - I think he'd written one to Dr FitzGerald asking about what information could be provided and there was a response email from Dr FitzGerald. I certainly spoke to Peter Leck and said, "Look, we need to make sure that Dr Patel was aware of the investigation and give as much information", but Mr Leck made the decision to, you know, provide the information that he did.

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I suggest to you also that at no time, as a result of any of the matters contained in the 22 October 2004 letter of Ms Hoffman, did you impose any restriction or regulation upon the conduct of Dr Patel as a surgeon working at the Bundaberg Hospital?-- As I have said previously - as I said previously, we - I told him he would no longer be doing oesophagectomies and then there was further - further told - agreed at the meeting, the 13th of January, that he would not undertake any form of surgery - elective surgery requiring intensive care - care in the intensive care unit at the Bundaberg Base Hospital.

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Are they the only matters of regulation or restriction that you say you imposed?-- As regards his surgical practice?

Yes?-- Yes.

I want to take you now, if I might, specifically, to the Toni Hoffman letter. Commissioner, before I do that, can I just raise this: I have uplifted from the exhibit, through my instructor, a copy of that letter. I am told that the copy in question - it is certainly reflected in the copy I have in my hands - has handwriting on it and in respect of some patients, it does identify those patients. Now, I wish to ensure that those patients, all of whom are still with us, as I understand it, aren't identified by the press. But I haven't doctored the document by whitening them out or anything like that.

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COMMISSIONER: No.

MR DOUGLAS: So perhaps the best course, if it hasn't already been adopted, is for you to make a direction that insofar as this document - which I propose to put on the overhead, for various reasons of convenience - contains identification of witnesses, that you direct that those - sorry, identification of patients, that those patients not be identified in the

press.

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COMMISSIONER: I so direct.

MR DOUGLAS: Thank you. Do you have a copy of the letter of 22 October 2004?-- I don't believe I do.

Thank you. I will put it on the visualiser if I may. I want to take you through this letter. I have highlighted it. And I have also numbered it for the convenience of taking you through it. Some preliminary matters to start with, it was dated 22 October 2004 and would have come into your hands within days of that, do you agree?-- I received an email copy.

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Thank you. If you look in the first paragraph, I have highlighted that paragraph and put a number 1 beside it. It was clear to you, when you read it, that the subject matter of the letter was - and I quote: "the behaviour and clinical competence of one of the surgeons, Dr Patel."?-- Yes.

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You would have read this document, I suggest, as soon as you received it, some time within days of 22 October?-- Yes, I did.

And you would have read it carefully, given the subject matter as expressed in that opening paragraph?-- Yes, I did.

And you would have carefully considered it?-- Yes, I did.

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It was apparent to you after you read it that the allegations contained in this letter were very serious?-- Yes.

It was apparent to you when you read it that the allegations, as expressed, were detailed by reference to patients, circumstances and dates?-- There was some details of patients and there was some dates, yes.

You identified the author as a longstanding senior member of medical staff at Bundaberg Hospital?-- I identified it as Toni Hoffman, who is the nurse unit manager of the intensive care unit.

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You knew Toni Hoffman?-- Yes, I did.

You had known her since commencing at Bundaberg Hospital?-- Yes, I did.

You believed her to be a dedicated practitioner?-- Yes.

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You believed her to be a well respected practitioner?-- I understood that she was, you know, the nurse unit manager of the intensive care unit. The nurses there seemed to work very well for her.

You believed that she was a competent practitioner?-- I can't comment on that.

You had no reason to doubt her veracity in the sense of her belief in what she was saying was bona fide?-- I had no reason to doubt her - her veracity or bona fide.

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Is it correct to say, according to your recollection, that upon receipt of this letter it was the first time allegations of this type concerning Dr Patel had been raised in such a detailed and clinical fashion?-- Certainly a very detailed fashion.

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You must have been alarmed when you received and read this letter?-- I certainly was - was certainly concerned.

You were alarmed? Would that properly describe it?-- I was concerned about the some of the details on the next page.

In the course of your career in public health prior to October 2004, had you ever received such a document, a document like this, the same genre?-- No, I hadn't.

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It was plain to you when you read it that the substance of the letter impugned not just the personal behaviour, in terms of relationship with staff, but also the clinical competence and judgment of Dr Patel?-- It certainly kind of questioned those-----

Not just questioned them but impugned them?-- I would-----

Isn't that so?-- I would say questioned.

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Does severely question them meet your characterisation of it?-- Yes.

And it was one of your senior surgeons?-- Yes.

One of your senior surgeons who had been working at Bundaberg Hospital, practising as a surgeon for over 18 months?-- Yes.

And when you read it, you would have readily brought to mind that which you knew, to the effect that this surgeon, Dr Patel, had never been credentialed or privileged under Queensland Health and, in turn, Bundaberg district credentialing and privileging policy?-- That's correct.

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You knew at the time you read this letter that all he enjoyed were interim privileges?-- Yes.

And those interim privileges had been granted by you?-- I think they were granted by the district manager on my advice.

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They were granted on your advice in June 2003, some 16 months earlier?-- Yes.

At the time you read this letter, you also knew that Dr Patel was registered by the Medical Board as a senior medical officer but not as a specialist?-- I was aware that, yes, he was registered as a senior medical officer.

You knew he wasn't registered as a specialist; isn't that so?-- Yes.

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And you knew it as at this date?-- Yes.

You had been exhorting him to seek registration as a specialist from shortly after the time that you arrived at Bundaberg?-- Yes, I did.

And he had never done so?-- He had not completed - he had not completed the process.

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He hadn't started the process, to your knowledge?-- I understood that he had started - he had started the - started the process but that he was awaiting some further information from the United States.

Who gave you that information?-- He did.

When?-- At some stage during his employment. I think probably in the first part of 2004 but that's - that's a guess.

20

I suggest to you that at the time you read this letter in October 2004, you also knew that he had never lodged documents which would at least start the process by which he could be credentialed and privileged at Bundaberg Hospital?-- I would have to look his file up but I believe that he had - I think he had provided an application.

30

You were still writing to him in mid-2004 asking him to lodge the documents which would enable him to be credentialed and privileged?-- He was - all doctors - all doctors who were working at Bundaberg Base Hospital were asked to provide application - complete the application forms and to provide the information which was required as per the application.

And he never had?-- That was - I believe that - I would have - as I said, I would have to look his file up. I believe he did provide an application and he did provide some of the information that was required, but he was required to provide further information.

40

So the process had bogged down, is that what you say?-- Yes.

Can I now turn to the body of the letter, which is on the screen - and, again, Commissioner, this is exhibit TH37 to the statement of Ms Hoffman, which is Exhibit 4 in this Commission. Above what I have marked as item 2 in the body of the letter which starts "Dr Jon Joiner and I"-----?-- Yes.

50

-----there is some history related in respect of a particular patient, is there not?-- Yes, above, yes.

Thank you. And then in that highlighted portion marked 2, the author of the document, Ms Hoffman, refers to an occasion when Dr Joiner and she, Ms Hoffman, attended upon you to voice concern about Dr Patel undertaking an oesophagectomy upon a

patient at Bundaberg Hospital in 2003 due to the difficulty in providing postoperative care?-- Toni Hoffman and I sat down but I have no recollection of any meeting with her and Dr Joyner together.

1

You certainly recall an occasion in about May 2003 - perhaps June 2003, but around that time - when one or the other attended upon you expressing concern about the capacity of Bundaberg Hospital to provide postoperative care to a patient undergoing an oesophagectomy procedure at that hospital?-- I remember Dr Joiner coming to see me in June that year about that concern and also - yes, and also to arrange transfer of that patient.

10

You also - and I will come to this later, but you also, at about that time or shortly after that time, in late June or early July 2003, had a conversation with a Dr Cook, an intensivist at the Mater Private Hospital, by telephone in which he also expressed to you his concern about the Bundaberg Hospital undertaking oesophagectomies given the difficulties with providing postoperative care?-- Yes.

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And you didn't understand Dr Cook to be criticising Bundaberg Hospital in saying that, he was merely identifying that a small provincial hospital such as Bundaberg might not be able to provide the optimal post-operative care that would be required for the undertaking of such a procedure?-- Yes, that's right.

1

He was contrasting a major public hospital?-- I can't remember if he contrasted, but certainly he dealt with - I agree with the first part of your statement.

10

Thank you. In any event, coming back to the letter, one sees identified the fact that Ms Hoffman in criticising Dr Patel is, in effect, drawing you into it as well, saying, "Look, I pointed out some of these problems to you earlier." You were conscious of that when you read this letter, weren't you?-- Yes, I was.

Did you resent that?-- No, I didn't.

20

In the third highlighted passage - you will see number 3 in the overhead - she expresses that she voiced these concerns to you. Do you see that?-- Yes.

Can I just pause to ask you this: were you inclined to reject the concerns expressed in this letter, expressed by Ms Hoffman, on account of the fact that the problems involving Dr Patel to which she was referring, these allegations had been raised with you over a year earlier?-- No.

30

Go to the fourth paragraph which I have highlighted with the number "4" beside it. There's a recitation which you read at the time and which you understood to be that Ms Hoffman was recounting previous discussions she had had with Dr Patel to the effect that Bundaberg Hospital wasn't equipped to keep ventilated patients for extended periods. That's what you read?-- Yes.

And you also understood that Ms Hoffman was recording that Dr Patel had apparently rejected such a suggestion and not just that, but had used your name, Keating's name, in his defence of that rejection?-- That was the first - this letter was the first time I was aware he'd used my name or Peter Leck's name in rejecting her information.

40

What she was recording there in that regard wasn't lost on you, was it? Apart from any other sins that might be identified by way of allegation in Ms Hoffman's letter, you knew it was being suggested that Patel was using your authority as a basis for dictating outcomes that he wanted within the hospital?-- This was the first time that I was made aware of it in writing.

50

I'm not suggesting otherwise for the moment. But that in itself was a matter which was pretty serious, wasn't it, in your mind as an administrator?-- Yes, it was.

One staff member lording over another saying, in effect, if

the allegation's true, "Dr Keating will support me in my view."?-- That would have been their opinion.

1

But as a concept, it's a pretty serious matter from an administrative perspective that one staff member will be seen to do that, you would have thought at the time?-- It was one of a number of concerns - one of a number of concerns raised in this letter. I certainly wasn't happy about the fact that - hearing about this - this instance. I wasn't - would not have been agreeable to having my name used in this situation by this individual.

10

You want to do something about it?-- It was one of the parts that has to be looked into with regards to this letter.

You never did anything about that, did you?-- As regards the use of my name and-----

Yes?-- No, I didn't.

20

It would have been a simple matter for you after reading this letter to in a subtle and sensible way to say to Dr Patel, "Look, in dealing with staff members, I do think it's important that you express a view, but if my name is to be mentioned as a justification for your actions, then you should first discuss it with me.", something to that effect?-- That's a reasonable proposition.

One hardly needs a management degree to arrive at a conclusion that that's an appropriate course in order to deal with staff who might be seeking to lord it over others utilising the manager's authority?-- Yes.

30

But you didn't do that?-- No, I didn't.

Go to the paragraph - I've already dealt with paragraph number 5 about using Peter Leck's and Darren Keating's name as a type of intimidation which she expresses there at least. Go to item 6. Do you see that's a reference to her alleging that Dr Patel would argue with anaesthetists about which inotrope-----?-- Yes.

40

-----to use? And she goes on to say, "His choice of inotropes did not reflect best practice guidelines in Australia." Do you see that?-- Yes, I do.

When you read this document, your belief was that the author, Ms Hoffman, had good reason to know what she was talking about when she expressed that?-- I believe that she would be aware of current practice in Australia.

50

And she expressed that practice as one which was apparently an anathema that may be unacceptable to the choice of Dr Patel?-- I was not made aware of this situation from the anaesthetist. If the anaesthetists had such a problem with this, I would have believed they would have brought it to my attention.

She's telling you-----?-- I would have also - would have

preferred to have heard it from the anaesthetist.

1

You could have asked the anaesthetist?-- Well, I used to see Martin Carter on a regular daily basis and certainly he never brought this type of issue to my attention.

Did you ever ask him about this issue?-- About the issue of inotropes?

Yes?-- I can't recollect that I did.

10

Here was a lady telling you in her belief that Dr Patel wasn't adopting practices which were best practice guidelines in Australia, but you didn't think it was an idea to ask someone about it?-- I think that we may have asked - I am just correcting this - I think we may have asked Mr Berens when we interviewed him about the situation.

That is one of the subsequent interviews to which you refer in your statement?-- Yes.

20

I will come to that?-- Apart from that, no, but I was also aware that guidelines as regards the use of inotropes do change and have changed and continue to change and that - well, you know, senior staff in these situations do at times differ about which drugs they would use, and I believe that's part of their professional difference of opinion. But certainly if there was a major issue the anaesthetist would have been speaking to me.

30

COMMISSIONER: So you just wait till they came to you? Having got a complaint like that, you don't bother to investigate it? Is that what you are saying?-- In this situation - in a normal situation where a complaint - yes, I would go and investigate it. In this situation, this letter was part of an overall large complaint which was being managed and coordinated by the District Manager.

I don't understand that. There are a number of complaints in that letter. This is one of them?-- Yes.

40

Why did you not investigate this one?-- Because this was - this letter was directed to Peter Leck. Peter Leck said that he would be taking control of this - of this situation and he just directed me to do certain tasks relating to his investigation and how he wanted to further the - this complaint and the investigation of his complaint.

MR DOUGLAS: Do you say that you were just in supine acquiescence with whatever Mr Leck wanted to do in response to this complaint?-- Certainly he took on - he certainly made it very clear to me that he wished to direct how this complaint - this letter of complaint was investigated.

50

Mr Leck's not a doctor, is he?-- No, he's not.

You are a doctor and you were giving him advice about medical matters pertaining to conduct of the Bundaberg Hospital?--

Yes.

1

You didn't see that you had some proactive role in assisting him, a nondoctor, in responding to the content of this letter of complaint?-- He asked me for - he asked me for my input and I certainly said that there were a number of issues that needed to be investigated. I outlined my preference for that investigation. I also believe that there were a number of interpersonal differences in this - that there was two situations, two components of this letter, the interpersonal situation and the clinical issues relating to the comments of Dr Patel.

10

So you weren't going to offer any information of a medical nature which might assist Mr Leck in his decision-making process unless you were asked? Is that your evidence?-- That's right.

And the same situation - I will start again. I suggest to you that that's the same approach that you adopted when you were having your discussions with Dr FitzGerald in mid-February 2005 when he came to undertake his audit investigations, "I'm not going to say anything to him about any subject matter unless he asks me."?-- I was prepared to answer anything from Dr FitzGerald. The questions that he asked me were for a very general nature. He did not ask me any specifics and I was prepared to provide any specifics to him that he requested. He certainly was just trying to get a general feel for this. As regards this letter here, Mr Leck made it very clear where he wanted to go.

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30

Can I just take you back in this letter, if I could, please, to what I have marked as item 5. It's a passage I have highlighted commencing, "He would use Peter Leck's and Darren Keating's names." Do you see that?-- Yes.

Just go on a bit in that sentence. Do you see there that Ms Hoffman has recorded in the document this, and I will read it into the record, "Dr Patel would threaten the staff with his resignation when it was suggested" - sorry, that's not what I wanted to refer to. It's the next item down. "He stated that on several occasions" - I will start again. "He stated on several occasions he would go straight to Peter Leck as he had made him half a million dollars this year." Do you see that?-- Yes, I do.

40

You understood precisely what was being referred to there when there was a reference to Patel making half a million dollars this year, didn't you?-- I didn't know precisely. I assumed.

50

What did you assume?-- I assumed it was talking about elective surgery.

You knew that Dr Patel had been working diligently to complete all elective surgery at Bundaberg Hospital?-- I know - I would agree he was working diligently. I don't know if you could ever complete elective surgery. The demand is always greater than the supply.

Certainly. But you knew as far as you could see that he'd been putting in the hours to do available elective surgery?-- What I was aware is that he was working with the theatre staff to improve the efficiency of the theatre so as to increase the access for patients requiring elective surgery. He was very focused on making sure that those patients who were requiring elective surgery were not cancelled at the last moment when there was opportunity for them to have their operation.

1

You saw that as one of his great virtues?-- I saw that as - certainly one of his virtues.

10

And that was important to you as Director of Medical Services because you knew that if the elective surgery targets or target set by Queensland Health in respect of Bundaberg Hospital were not achieved, then it was likely that the budget allocation to Bundaberg Hospital the following year could be reduced?-- I was aware of that possibility.

20

And you were aware of that when you were reading this letter?-- You are all - you are aware of that. Yes, you are aware of the elective surgery program and the implications.

COMMISSIONER: But you knew that's what he was being referred to?-- I assumed he was talking about the half million dollars that related to the elective surgery program and the fact that we were working towards the targets.

Would this be a convenient time?

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MR DOUGLAS: Yes, it is, Commissioner.

COMMISSIONER: We will now adjourn.

THE COMMISSION ADJOURNED AT 12.59 P.M. TILL 2.30 P.M.

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THE COMMISSION RESUMED AT 2.02 P.M.

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COMMISSIONER: Yes, Mr Douglas?

MR DOUGLAS: Thank you. Could the visualiser be engaged with the document that we were looking at, please. Do you recall before the adjournment, Dr Keating, I was taking you to the 22nd October letter from Ms Hoffman. There is a copy on the screen in front of you now?-- Yes.

10

Thank you. If I could take you to the item I have marked 7 and the portion that I have highlighted which follows it. You will see there's a reference there by Ms Hoffman to Dr Patel yelling, speaking in a loud voice. Just stop at that point. You had observed, had you not, Dr Patel to yell and speak in a loud voice on a number of occasions?-- I'd observed him to speak in a loud voice. I don't recollect him yelling in a loud voice.

20

You see there's a reference by Ms Hoffman alleging that Dr Patel denigrated the ICU and herself, that is Ms Hoffman, and at times the anaesthetist?-- Yes, I see the reference.

Okay. Was that a matter which you took up with any person in the hospital as a matter of investigation?-- I was aware of - I was aware that this had occurred in the past. As I said, the anaesthetist - and when I'd spoken to Martin Carter in particular, he never complained that he was feeling - you know, he'd been yelled at or spoken to in a loud voice and felt intimidated.

30

All right. Thank you, Dr Keating. If we go over the page then to the next item I have marked, you will see I have marked there as number 8 - there is a highlighted portion which commenced, "Soon after Dr Patel started operating", et cetera?-- Yes.

And Ms Hoffman makes reference there to, and I quote, "high complication rate among the patients"?-- Yes.

40

She goes on to refer to the fact that a number of the patients suffered wound - what's the correct pronunciation?-- Dehiscence.

Dehiscence, thank you. And several - that is several patients experienced perforations. That's what she says?-- Yes.

And then what she proceeds to do is to make a statement to the effect that she believes that there is a list of patients requiring formal investigation. Do you see that?-- Yes.

50

She also identifies the fact that this list is taken from the ICU statistics and do not comprehend any statistics of patients from other spheres of the Bundaberg Hospital?-- Yes.

She refers there to "OT", which would be reference to

operating theatre?-- Yes.

1

And also she refers to the Surgical Ward?-- Yes.

You understood by that reference that Ms Hoffman was identifying to those who would read the letter that she could only speak for ICU, but that she was suggesting that there may well be like statistical data warranting investigation among patients in other spheres of the hospital. You understood it that way, didn't you?-- I understood that she - yes, that she was relating to ICU and that there would be potential for - yeah, other information to be obtained from other areas.

10

She was identifying that in a context of a complication rate among patients?-- Yes.

And she then proceeds to make a reference to a number of patients who she says warrant investigation in each case?-- Yes.

20

Did you ever cause an investigation of those patients to be undertaken?-- No, I did not.

Did you understand Ms Hoffman to be suggesting that there ought be an investigation of those patients?-- Yes, I did.

Did you leave it to Mr Leck to decide whether or not those patients would be investigated; that is, the ones she identified?-- I didn't leave it to him. He took the initiative based on this letter that was provided to him. He was the one who was running with this - this investigation of this complaint.

30

It wouldn't have been difficult for you, I suggest, to turn up those files and examine them yourself in order to determine whether there was any substance in what Ms Hoffman was suggesting about those instances?-- Yes, I could have arranged for these files - to reveal his files. It would have taken some time.

40

It would have been a simple matter for you to turn up the files to start with, would it not?-- To request them, yeah, it would have been easy to do, yes.

And I suggest to you to investigate that number of items that she's listed there, it would have been a relatively simple process for you to initiate such an inquiry?-- I believe to have done it properly and thoroughly it would have taken some time.

50

Whose assistance would you have required in order to have instigated such an investigation?-- It would require another experienced surgeon as a minimum.

There were other experienced surgeons located in Bundaberg at the time, were there not?-- Yes, there were.

Those were surgeons whom you had an acquaintance?-- Yes.

1
You could have suggested, I suggest, to Dr - I should say Mr Leck, that one of those surgeons be engaged to look at these instances which Ms Hoffman had identified?-- I could have suggested it, but he had already made clear that he wanted an external investigation and it was someone from outside the district.

10
Do you believe that your examination of the file in the case of each patient would have provided you with some assistance in discerning the integrity of the opinion that Ms Hoffman was passing about those particular instances?-- Yes, it would have helped to inform me of that.

But you didn't so?-- No, not for these, no.

It would have been a sensible course to adopt, would it not?-- It would have been. Yes, it would have been a sensible course to adopt.

20
It would have been a sensible course for you to suggest to Mr Leck that it be adopted?-- It would have been a sensible course to suggest that to Mr Leck. As I said, this situation was one that - where he was - he had in his own mind what he wanted to do and how he wanted to go about it, and - yeah, I - he was very focused on a getting some collaboration from some of those two doctors who were named by Toni Hoffman in that letter, and then getting an external review from outside, outside the health service district.

30
When you spoke of collaboration, of course, you meant corroboration from the doctors concerned?-- Yes.

Thank you. I understand. You mean it that way?-- Corroboration, yes, sorry.

40
Thank you. Now, Ms - I am sorry, before I go on, it would have been within your power to inquire from those staff who headed up the operating theatre and the Surgical Ward to identify any instances which in their opinion might mirror those, that is a complication rate, within those particular spheres of the Bundaberg Hospital?-- Yes, I could have - yes, I could have spoken to them. In fact, I did speak one of them later.

When is later on?-- Around the time of Mr Kemps' death.

50
At the time of Mr Kemps' death in December 2004, which is about two months after this, you did in fact speak to someone from another sphere of the hospital in relation to instances of complication in that sphere?-- Yes, I did.

Who was that?-- That was the then Acting Nurse Unit Manager of theatre, Gail Doherty.

And what did Ms Doherty inform you about these matters?-- Ms Doherty suggested that he was a pedantic surgeon who preferred senior nurses to scrub with him, and she was a very

experienced nurse and she actually did a lot of the scrubbing with him, and felt that he was no better or no worse than anyone else that she had seen.

1

Did you make a specific inquiry of her about a complication rate being evidenced in the operating theatre?-- I asked her as regards - yes, his technique, anything that she had observed, including complications.

So what did she say about complications when you asked her in December?-- She didn't say that - she didn't say there was - sorry, she said there was no difference, you know, he didn't stand out from the rest of the surgeons.

10

Did you inquire of anyone in this Surgical Ward to the same effect?-- No, I didn't.

That would have been a simple matter for you to do?-- Yes, it would have been.

20

But you didn't do it?-- I didn't do it, no.

It would have been a sensible course for you to adopt, given Ms Hoffman's allegations in that respect, I suggest?-- It would have been. As I said, Mr Leck was very much focused on trying to - coordinating and managing this complaint. He was very focused on making sure that this information was not spread far and wide across the organisation. He was concerned about the information here and we realised the seriousness of this, and I think he definitely wanted an external investigation. He didn't - yeah, didn't want to be speculative about the information - the people he spoke to - and this was following up the people that was named by Ms Hoffman.

30

Even for the purpose of an external review of these matters contained in this letter, it was obvious to you that the external reviewer would need information from the operating theatre and Surgical Ward as to the complication rates?-- They would were able to provide some probably anecdotal information. I am unaware that they keep consistent records of that - of the type you are talking about, and they would actually have to arrange for that data to be extracted through the DQDSU.

40

I suggest it would have been obvious to you that any external reviewer reading this document would have channelled through Mr Leck and in turn you a request for information as to complication rates within operating theatre and Surgical Ward?-- They could have, yes, they could have asked for that, yes.

50

Your experience tells you that if an external reviewer was looking at this document, he or she would in fact make that inquiry?-- Yes, they would make that inquiry, yes.

1

You didn't feel it incumbent upon you to initiate that inquiry immediately so as to truncate any delay that might occur at a later point in time when the external reviewer requested that information?-- No, I didn't do that, I was - that was one that they could have looked at all these individual cases but they also could have approached it from a different perspective as well.

10

I suggest to you this statement being made in this document only points in one direction as a matter of commonsense, namely, that an external reviewer would consider the complication instances adverted to by Miss Hoffman and would go on to request statistics from the spheres of the operating theatre and surgical ward?-- Yes, they would have asked for comparative data to look at the various - the information provided here.

20

Were you just turning your face away from this, Dr Keating?-- No, I wasn't.

Dr Keating, could you go on then to the matter I've marked as number 9? There's a highlighted portion, "The doctors at RBH questioned why we were doing such surgery here when we were unable to care for these patients."; do you see that?-- Yes, I do.

30

That's a reference, I think it's correct to say, to some instances of surgical procedures being undertaken which were said or alleged by Miss Hoffman to be beyond the scope of the Bundaberg Hospital?-- Yes.

Thank you. That's as you understood the document?-- That's as I understood the document.

Were you aware of any doctors from the Royal Brisbane Hospital questioning those matters?-- No, I was not.

40

You were aware, as you told us earlier, that a Dr Cook, who is an intensivist at the Mater Private Hospital had identified such concerns to you?-- Yes, he had.

He'd identified those concerns in late June, early July of 2003?-- Yes.

He'd spoken to you about that, hadn't he?-- Yes, he did.

50

No doubt you would have thought of that when you read this in this document?-- Yes.

Shortly after 22nd October?-- Yes, I remember that, I remember that time.

Thank you. If we can just scroll up on the visualiser, thank you. So a number of instances, you can see that - just scroll

back a little please - a number of instances were referred to by Ms Hoffman in this document, were they not?-- Yes, they were.

1

You see the patient references there, do you not?-- Yes, I do.

And it's not just an oesophagectomy that is referred to, there's also a reference to there in the penultimate item to a Whipple's procedure?-- Yes.

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What's a Whipple's procedure?-- A Whipple's procedure is a procedure on the pancreas, they all related to the pancreas, when - my understanding when you've got a tumor in the pancreas which blocks the duodena, you would then have to do a by-pass and do a by-pass with removal of that tumor.

Thank you. Could you go to the next item on the visualiser thank you? I've marked it as number 10 and there's a highlighted portion which commences, "On the 27th July 2004"; do you see that?-- Yes, I do.

20

You, when you read that document, immediately recognised it as referable to Mr Bramich?-- Yes.

Mr Bramich was a gentleman you knew who was a patient at the hospital who suffered a crush injury?-- To his chest.

And he was admitted to the hospital and there was a - and he initiated a transfer to another hospital but he died?-- Yes.

30

Thank you. When you read this document shortly after 22nd October, 2004, it would have been fresh in your mind, I suggest, that Dr Patel handled that matter very badly in relation to the relatives of the patient; do you agree?-- I believe that he - I believe that he, yeah, his communication from the reports that I received, the communication that he had with the relatives of that family were less than optimal.

Less than optimal of the character that he said words to the effect in their presence in a dismissive fashion, "He's going to die anyway"; that's what was reported to you?-- I can't remember if those words were reported to me at that stage. It was more the general handling of them and the sympathy and - or empathy that he displayed and the matter of fact manner of his delivery of information.

40

You were told it was extremely poor, as it was reported to you?-- Sorry, what was extremely poor?

50

You were told that his manner of dealing with the relatives was extremely poor?-- His - I can't remember, I'd have to look at the information to see, for the details exactly how it was reported to me, but certainly that was one of the concerns.

There was a concern that you knew about in relation to the - in dealing with the relative of this patient and you knew

about those matters prior to the 22nd of October, that is, prior to receiving this letter?-- Yes.

1

Thank you. And there was also identified in this document by Ms Hoffman certain matters relating to the treatment of Mr Bramich?-- Yes.

And they're highlighted, are they not?-- Yes.

And you knew also after reading this document that the treatment and handling of Mr Bramich by Dr Patel had caused a high or acute degree of stress in staff in the ICU unit?-- Yes.

10

Could you scroll please to the next page, thank you? I've marked two further items there for your attention, Dr Keating, is item number 11, you'll see a reference there in the body of that highlighted portion to this same issue that I canvassed with you earlier about Dr Patel allegedly enjoying a position of power due to alleged wholehearted support by Mr Leck and by you; do you see that?-- Yes, I do.

20

I won't read the rest of it out, but there's some fairly serious administrative and human resource issues raised by that particular item, are there not?-- Yes, there are.

You've already told the Commissioner that you elected not to raise those matters with Dr Patel?-- I was aware of these issues in having begun to review the death of Mr Bramich and in that information that was - that information kind of identified the same issues that were raised here with regards this and the plan was to have a meeting between Toni Hoffman and Dr Patel with Linda Mulligan and myself in attendance with a view of trying to determine a way ahead with regards these issues.

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Did that occur?-- It did not occur.

Was it your view that it should occur?-- Yes, it was my view it should have.

40

Did you say as much to Mr Leck?-- Yes, I did.

Why did the meeting which you just described not occur?-- He had received, he had received-----

Who's he?-- Sorry, Mr Leck had, I think been visited by Toni Hoffman and he, he said that there was some further issues or concerns and that he did not believe a meeting between Toni Hoffman and Dr Patel at this time would further the - the complaint resolution or begin a complaint resolution and that he would let me know when or if this would occur.

50

This complaint transcended Toni Hoffman, it just didn't concern Toni Hoffman, did it?-- No, that's right, but we were aiming what I believed was that the most important part was there were some significant interpersonal differences between Toni Hoffman and Dr Patel and that it was definitely affecting

the nursing staff in there and that if we could resolve the relationship at the highest level, that would go some way to working through the issues at a lower level, acknowledging that it was not a complete solution at that time.

1

The final item which I've marked 12 and highlighted concerns Dr Miach; do you see that?-- Yes.

And you knew Dr Miach to be a practitioner at the hospital?-- Yes, I did.

10

And you were told by the document that Dr Miach had allegedly reiterated, I quote, "Reiterated he has dealt with an issue by not letting Dr Patel near his patients." She went on to say, "These concerns were openly discussed at the Medical Services Forum."?-- Yes.

What's the Medical Services Forum?-- The Medical Services Forum is one of the clinical services forum that was conducted at the hospital. They included General Medicine, the Coronary Care component of the ICU, Rehabilitation, Renal Services, I think they were the major ones, and there're representatives of each of those awards with Dr Miach as the chair of that group.

20

Were they fora that you attended?-- Not on a regular basis, I did attend one or two of those but not on a regular basis.

How often did that fora meet?-- I think it was meant to meet on a monthly basis.

30

Do you recall being present at one of those forum?-- I do.

At which this issue was not discussed?-- No, it was not discussed.

Once you received this letter, did you take this issue up with Dr Miach?-- I did not take this issue up with Dr Miach.

Did you discuss it at all with Dr Miach?-- No, I didn't.

40

At any time?-- No, I didn't.

You knew Dr Miach well?-- I knew him, yes.

He was a senior specialist at the hospital?-- Yes, he was.

What was his specialty?-- Nephrology.

He was a person with whom you enjoyed a reasonable working relationship?-- I wouldn't use the word "reasonable".

50

You had a working relationship with him?-- Yes, I did.

You were his DMS?-- Yes, I was.

There would have been no effort involved for you to ask Mr - Dr Miach, without even referring to this letter, whether or

not what is referred to there is true, that is, that Dr Miach wouldn't let Dr Patel near his patients?-- I could have asked Dr Miach that but, as I said previously, Mr Leck was very keen to keep this complaint under his control, management and he very much directed who he wanted to speak to. I do remember that we - Dr Miach was on the - we were going to try and contact Dr Miach to interview him but I didn't think he was necessarily available at the other times that we were doing the interviews, but I didn't specifically speak to Dr Miach.

1

Dr Keating, for every hour, for every day, for every week that passed whilst the external review was being undertaken and finalised, Dr Patel was continuing to provide surgical services at the hospital?-- Yes, he was.

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And you knew that?-- Yes, I did.

You also therefore knew when you read this shortly after the 22nd of October, that if the allegations were true or even substantially true, as recounted in this letter, then Dr Patel was not fit to be undertaking the provision of surgical services at Bundaberg Hospital; do you agree?-- I don't agree with the second part of your statement in that he was not necessarily - that he was not fit. He may have been deemed, that would be for - he may have been deemed not fit by a panel but there may have been other ways that deal with this matter which may have included re-training, supervision, competency assessment.

20

And whilst that was being undertaken, I suggest, that is, upon the assumption that the allegations contained in the letter were true or substantially true, it would have been your recommendation on the back of those assumptions that he undertake no further surgical procedures at the hospital?-- That would not have been my recommendation for no further surgical procedures.

30

You're happy to let someone, on the assumption that these allegations are true or substantially true, loose on the public undertaking the elective surgery procedures or even emergency surgery procedures at Bundaberg Hospital; is that your position?-- It's my position with - he should have had some restrictions placed on him earlier.

40

What sort of restrictions?-- I think a number of these related to complex surgery which provided intensive care, including the oesophagectomy and the Whipple's.

The complication rates issue didn't?-- Sorry?

50

The complication rate didn't?-- Didn't?

Involve complex procedures?-- We had already looked at the wound dehiscence and the - on the information provided those numbers both in total and incidents have reduced. Within - yeah, reduced to both in total numbers and percentage wise.

I suggest to you - I'm sorry, I interrupted you?-- Other

information that we got from the clinical indicators that we were capturing did not suggest anything untoward as regards - as regards in identifying Dr Patel.

1

You also spoke to the three doctors that you identified in your statement within a short time of receiving this letter?-- Yes, that's right.

And you received information from them, didn't you?-- Yes, I did.

10

I'll come to that. I suggest though before you spoke to those doctors, when you had read and considered this letter, you believed it was a damning indictment of Dr Patel as a clinician?-- I believe that there was a number of, a number of allegations against Dr Patel which required further review.

Serious allegations?-- Serious - a number of allegations.

COMMISSIONER: Well, they were very serious, weren't they, if they were true?-- If they were true, yes, Commissioner, they were serious allegations against Dr Patel which required review-----

20

Well, wasn't-----?-- -----and corroboration.

Wasn't it appropriate, having had those serious allegations, to suspend him until they were properly investigated?-- Commissioner, that was not my decision to make as regards suspension.

30

MR DOUGLAS: It was open to you to suggest that to Mr Leck, was it not?-- It was open to me to suggest that.

Sorry, Commissioner, I interrupted.

COMMISSIONER: That's all right. Did you do that?-- No, I didn't.

MR DOUGLAS: You believed this document was an indictment of Dr Patel's clinical skills?-- I believe that some of his, yes, it was regards some of his clinical skills.

40

You believe this document was an indictment of Dr Patel's clinical judgment?-- I would say some of his both clinical judgment and his clinical skills.

You believe this document was an indictment of his managerial style and his capacity as a surgeon dealing with staff?-- It certainly raised concerns about his managerial capability but I was also aware of other things that he'd done as a manager.

50

Managerial skill on the part of the surgeon concerning staff, I suggest, is important if only because it can adversely affect the safety and well-being of patients?-- It has a potential to do that.

You believe this document was an indictment of Dr Patel's

character?-- It certainly reflected on his character.

1

Reflected adversely on his character?-- Yes, it did.

I say that in a sense that you were being told, if it was true, that Dr Patel was using your name and that of Mr Leck, to browbeat staff?-- Yes.

I suggest to you that following receipt of this letter, the natural and sensible thing for you to do was to reassure staff, perhaps by a circulated memorandum, that you and Mr Leck were not playing any favourites in favour of any surgeon or clinician over staff?-- That would have been one option open to Mr Leck.

10

It would have been an option open to Mr Leck if you had suggested it?-- And or - yes, and - or if he'd thought of it as well, but as I said, he was - I will come back to the fact that Mr Leck was and myself were very concerned about what was in this but he was very focussed on keeping control of it, he didn't want, I suppose, this developing into large amounts of gossip, rumour-----

20

COMMISSIONER: He didn't want it to get out?-- He didn't want it to get out of control.

He didn't want the news of it to get out?-- Well, not without any form of review or without any form of review but that's - I'm surmising that, Commissioner, I can't-----

30

That was your view too, was it?-- That we didn't want it to get out until it had been properly assessed.

Yes?-- And that there was further corroboration of the information, yes, I believe that there had to be some further corroboration of this information, further, you know, further review, yes.

MR DOUGLAS: Can I take you to the corroboration now?-- Yes.

40

The corroboration you speak of is the interviews that you conducted, together with Mr Leck, of Drs Berens, Risson and Strahan?-- Yes.

You participated in those interviews, I suggest, because you were the doctor, Mr Leck was an administrator purely?-- No, I took it upon the fact that he was the Director - he was the District Manager and I was the Director of Medical Services and that he wanted, yes, he probably wanted some of my - well, my understanding of medicine combined with the fact that he wanted the two of us there to kind of get the information so that there was kind of for what information was written down was to - was recorded appropriately.

50

I've asked you a number of questions today about procedures and medical matters, for instance, the question about Whipple's procedures about 10 minutes ago?-- Yes.

You recall those, don't you?-- Yes.

1

You were in a far superior position than Mr Leck in order to discern the nuances of any information which any of these three doctors provided to you in investigation of these allegations?-- I believe I was able to understand the medical terminology that they used. As regards the nuances, that I believe is bit open to, you know, from a personal - from a personal experience and knowledge basis as well.

10

All right. What I'd like to do, if I could be given back the document on the visualiser? I propose, Commissioner, to go through the three memos.

COMMISSIONER: Mmm.

MR DOUGLAS: I'll do it as expeditiously as I can. For you, Commissioner, and for those behind me and beside me, the three notes in question appear at pages 166 to 168 of the bundle of attachments to Dr Keating's statement. If I could put the first on the visualiser, thank you? And this is Exhibit DWK 62 which is at page 166 of the bundle. Look at either, sir, you can look in your book or look at the visualiser, wherever suits you, but I do wish to ask you about some highlighted passages. These were the notes of a meeting which took place on 29th October 2004?-- Yes.

20

Could you scroll up please? Keep going please to the bottom. Your name appears at the foot of those minutes?-- Yes.

30

You took the minutes?-- Yes, I did.

Thank you. You were present during the meeting with Mr Leck and Dr Berens?-- Yes, I was.

Dr Berens was a specialist anaesthetist at the Bundaberg Hospital?-- Yes, he was.

You knew him reasonably well at the time?-- Yes, I knew him well - I knew him reasonably well, yes.

40

Thank you. He was a person for whom you had a reasonable amount of respect?-- As much respect as the other clinicians.

You had no doubt - I'm sorry, I'll start again. You had no reason to doubt his integrity?-- No, I didn't.

You had no reason to doubt his candour?-- No, I didn't.

You state in the opening portion of this document and indeed each of the following documents the context in which the meeting took place?-- Yes.

50

You can say from these notes or minutes that you took that you said to Dr Berens, and if you didn't say it, Mr Leck said in your presence, that what was being inquired about was the clinical competence of Dr Patel; correct?-- I don't know if we actually used that - well, we - I don't believe it was

actually said along those lines, it was - sorry, it was probably said that there was a number of allegations made, what can you talk, you know, what do you want to say about Dr Patel, I suppose, in regards his clinical competence, that-----

1

You made it pretty clear to Dr Berens by the time you got into the detail, which is further below, that you were asking Dr Berens about the competence of Dr Patel?-- Yes.

10

He wasn't - couldn't have been in any doubt, you can say from your recollection of the conversation, that you - that's what you were asking him about?-- Yes, yes.

Thank you. If you go the first portion that I've noted under the heading "Response" I've marked it with a "1". You've recorded there that Mr - I should say Dr Berens told you that "Dr Patel's critical care knowledge was not up-to-date in relation to choice of some drugs and fluids plus application of some physiology principles to care of critically ill patients."; have I quoted it correctly?-- Yes.

20

That must have been a matter of some concern to you, that a specialist anaesthetist was saying that about Dr Patel?-- He's - he was talking specifically about some aspects in ICU.

COMMISSIONER: Did that concern you?-- Sorry?

Did those comments concern you?-- I've - I've paraphrased his comments, Commissioner, as they are written here, yes, they would, it was how - what he said to me during that conversation it was - he was very specific about a small number of events.

30

I still don't think you've answered my question: did his comment that Dr Patel's critical care knowledge was not up-to-date in relation to choice of drugs, fluids plus application of some physiology principles of the care of critically ill patients concern you?-- Not in the context in which - not based on the actual information in the context in which Dr Berens said.

40

You had no concern about that statement at all?-- I had some concern but it wasn't large because of the - because of the detail that Dr Berens related to me as regards these information, that is, regards what he'd said.

MR DOUGLAS: He said he remembered two cases relating to his concerns, that's what he says there?-- Yes.

50

But he wasn't asked to bring along documents to substantiate that, was he?-- No, he wasn't.

And you didn't ask him to go away and investigate those matters once you'd raised this with him at the meeting as to why he was there?-- He wasn't asked to do that, no.

It would be the sensible course to ask him to do that, would

it not?-- Well, because he outlined these two cases and he - I've believed he said that was what he - that's all he could recollect, these two situations.

1

Well, there's more than one, we know there's two. Is two at such a small number that it's not worth worrying about in the context of what I've highlighted in that document for you as Director of Medical Services?-- No, not on - no, not in the way that Dr Berens provided this information to me and I was already aware of one of these situations as regards the physiology principals and care of critically ill patients.

10

So you knew before this meeting on the 29th of October that there was an example of Dr Patel having less than optimal application of some physiology principals to care of critically ill patients?-- I was aware of one incident, yes.

And when did that incident occur?-- It happened early in 2004, I'd have to look at the date.

20

Was it a matter you took up with Dr Patel?-- Yes.

What were the circumstances of it?-- This was related to the use of haemoglobin measurement from an arterial blood gas sample in ordering blood for a patient who was in ICU.

And what response did Dr Patel give you?-- Dr Patel spoke to me. He also provided a copy of his draft e-mail he was going to send it to Dr Carter which I think I've included in my statement.

30

And you were satisfied with his response?-- I'd spoke to him and I also spoke to Dr Berens.

At the time?-- Yes.

And when you were speaking to Dr Berens in October 2004, it's the case that he's citing to you that apparently there's another instance of where that's occurred?-- He was talking about the choice of drugs.

40

Yes, and did you ask him when these other instances occurred?-- I can't recollect exactly. Yeah, I think he provided, I believe he provided the information and said it was related to his time at the hospital, so I think he begun in January 2004, so it was in 2004.

So your best recollection is that Dr Berens was telling you on this occasion on 29th of October 2004 that there was another instance following the occasion in January 2004 where Dr Patel had, to Dr Berens' knowledge, demonstrated an application of physiology principles to care of critically ill patients which was less than optimal?-- No, no, sorry, it was - there was one case related to the physiology principles and there was one case related to drugs and fluids.

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1
Did you ask him for the details about the instance pertaining to drugs?-- That's the one I was talking about. I think that's where we did ask him about that. I think it was related to inotropes and fluids. Inotropes-----

10
What did he say about that?-- He - he acknowledged there had been some discussion about which was the appropriate inotrope to use and/or which was the appropriate fluid to use. He also acknowledged that the literature on fluids in particular continued to change, and that he did not believe that it had adversely affected, you know, the patient, but it probably was different to what the staff and he were used to and what he had been reading about in the literature.

Was this a matter that you took up with Dr Patel to ensure that he wasn't continuing to engage in this apparent error?-- No, I didn't.

20
Why not?-- At this stage Mr Leck was very focussed on managing this complaint and he didn't want - he did not want to speak to Dr Patel and didn't allow me to speak to Dr Patel about this.

But Dr Patel is still treating patients at the hospital on a day-to-day basis after 29 October 2004?-- Yes, he is.

30
Quite apart from any complaint that's been managed by - I should say Mr Leck, as you say, wouldn't you, in the ordinary proper administration of the hospital, want to engage one of your clinicians, if you received knowledge that he or she was undertaking matters pertaining to the specialty in question in a less than optimal manner?-- From the information provided by Dr Berens, he certainly did not - you know, certainly did not convey that impression or say those things, to say this man is incompetent, shouldn't be treating this type of thing. He acknowledged there was a professional difference of opinion as regards the drugs and fluids being used on these patients.

40
No, he was telling you that Dr Patel, in his opinion, was engaging in critical care other than in an up-to-date fashion pertaining to drugs and fluids?-- In relation to a small - in relation to a small number of drugs and as regards - as regards fluids, yes.

50
Forget Toni Hoffman's letter. If someone told you hypothetically - and I say this with due deference to Dr Gaffield, it is purely hypothetical that on 29 October 2004 Dr Gaffield, one of your surgeons in respect of whom there was no complaint, had been "engaging in critical care knowledge in a fashion that was not up-to-date in relation to choice of some drugs and fluids", you would have immediately taken that up with Dr Gaffield, I suggest?-- No, I wouldn't have.

You wouldn't have? You would just let him go on engaging in those practices?-- No, because this was - this was - we were asking Dr Berens to provide his view on Dr Patel. He did not come across as overly critical of this and/or saying that this

man should stop treating patients in the ICU and/or treating this. What he said was there had been this situation, and I think he also suggested that part of it may have been related to what he was using in the United States and that he kind of - he said - or sorry, he also conveyed that this situation had settled down and he was happy to continue to work with Dr Patel. He certainly did not-----

1

COMMISSIONER: That doesn't appear in your note of that meeting?-- Doesn't-----

10

I beg your pardon?

MR DIEHM: The last sentence of the document.

COMMISSIONER: "He could continue to work with Dr Patel in the future." Is that the one you are talking about?

MR DIEHM: Yes, Commissioner, I thought that addressed the matter you raised.

20

COMMISSIONER: No, it didn't. But thank you. He didn't tell you that the matter had settled down, that Dr Patel had changed his practice in any way, did he?-- What I remember is he provided two cases out of the total time he had worked with him, two instances that he could remember, and that he did not see that it was a major issue, that he was prepared to work with him, and I have some recollection of him saying, yes, Dr Patel had changed some of his practice.

30

MR DOUGLAS: You were-----

COMMISSIONER: You don't mention that?

MR DOUGLAS: I am sorry, Commissioner, I will deal with it. You were being very careful, on the occasion of taking the notes for this and the subsequent two meetings with the other doctors, to encapsulate accurately and carefully the information that you elicited from each of these doctors?-- Yes.

40

You were doing so because, as you told the Commissioner earlier, you were seeking to record matters which may or may not constitute a corroboration of the matters or some of them that had been adverted to in the 22 October letter from Ms Hoffman?-- Yes.

When it comes to you recalling the events of this occasion, that is the occasion on the 29th of October 2004, and the two subsequent occasions involving the other doctors occurring shortly thereafter-----?-- Yes.

50

-----surely you would defer to the notes that you took at the time for recalling what was said?-- Yes, I would defer to the notes.

What's the answer to my question?-- Yes.

Could I go on to the next item I have marked, item number 2? You were told by Dr Berens that "in his view Dr Patel's manual skills were very good"?-- Yes.

1

Thank you. And I haven't highlighted it but he also made the comment that "patients being admitted to the Bundaberg Base Hospital and the ICU were older and sicker than several years before"?-- Yes.

Do you see that?-- Yes, I do.

10

Did you understand him to be saying to you in that vein that the patients coming in were older and sicker and therefore there may be a prospect that things have a greater likelihood of going wrong?-- Yes.

In effect?-- Yes.

Thank you. In the item I have marked as number 3, you have noted that "Dr Berens questioned Dr Patel's judgment to undertake some procedures"?-- Yes.

20

And he instanced a Whipples procedure and also some vascular procedure?-- Yes.

And what he went on to say was that he, Berens, had concerns about Dr Patel's currency in undertaking such procedures?-- Yes.

Did you understand him to be saying to you in that vein that he had a concern that whilst Dr Patel may have undertaken such procedures in the past, he hadn't undertaken them in the recent past and that was an inhibiting factor in him undertaking them on an occasional basis?-- Yes.

30

Did you also understand him to be saying to you that Dr Patel, in his view, may not have been keeping up with current practices in relation to those procedures?-- No, I only took it as the first part.

40

Thank you. That would have been a matter of some concern to you, that this practitioner at the hospital was questioning both Dr Patel's judgment and his currency?-- I think he was questioning his judgment and - his judgment in taking - in performing these procedures with a lack of currency, so-----

That's not - I am sorry to interrupt you, that's not a matter you chose to take up with Dr Patel?-- Not at that time.

You didn't take up with him any curtailment of procedures after that until December 2004 in relation to the oesophagectomies?-- That's right.

50

What were you waiting for in this vein?-- We were waiting for - I was waiting for Mr Leck - Mr Leck wanted the external review to be completed and to be completed to overview everything. At the moment we were getting snippets of information. We didn't have the comparative data there. It

required, you know, thorough review of a significant amount of information.

1

In the meantime, as far as you knew, Dr Patel would continue to undertake vascular procedures and Whipples procedures?-- Unfortunately, yes.

Unfortunately?-- Yes.

Can I go on to the next item I have marked, number 4?

10

COMMISSIONER: You could have stopped him immediately doing those procedures, couldn't you?-- I could have, Commissioner, or-----

MR DOUGLAS: The method of dealing with that, in the case of patients requiring those procedures, was to transfer them to another hospital, metropolitan hospital?-- Yes, it would have been.

20

Thank you. Did you think there was some cachet for Bundaberg Hospital in being able to undertake these more technical procedures?-- No, I didn't.

That wasn't your attitude?-- No, it wasn't.

Can I go to item number 4 in the document?

COMMISSIONER: They were more heavily weighted procedures?-- Whipples - I don't know exactly but usually the - I don't know the exact weighting for a Whipples procedure, but usually the more complex the procedure, the heavier the weighting.

30

So that they probably were more heavily weighted procedures?-- Yes. Whipples is a complex procedure, so, yes, it would be more heavily weighted than some smaller - smaller operations.

Yes.

MR DOUGLAS: And you knew that at the time you-----?-- Yes.

40

-----typed these minutes?-- Yes.

I come to item 4, "Mr Berens identified that in his view Dr Patel's attitude made him hard to work with on occasions."?-- Yes.

If you go to item 5 then, the document I have marked, "Dr Berens expressed the view that Dr Patel made categorical statements, didn't appear flexible and wouldn't discuss alternative clinical options."?-- Yes.

50

Can I go on and quote the next two sentences - I want to ask you some questions about them: "Dr Berens believed that Dr Patel appeared reluctant to admit to other doctors his own mistake or error in care of patients. He didn't appear to be completely accountable and honest about his surgical actions." I have quoted it correctly?-- Yes.

That's alarm bell stuff, isn't it, for you as the DMS of this hospital?-- It is concerning. 1

It is of distinct concern because you were being told by an apparently respectable independent person, Dr Berens, who had the opinion that Dr Patel's manual skills were very good, that Dr Patel wasn't flexible enough to consider clinical options other than those which he identified?-- Yes. 10

I mean, that's - that's lack of proper flexibility and candour in considering clinical options and outcomes for patients coming in for surgical procedures?-- Yes, it is.

Doesn't that lie at the heart of proper surgical practices?-- I am not a surgeon.

Don't need to be, do you, to know that?-- I think that - I would say that this is not - there are - this is - the situation that Dr Berens described of Dr Patel would not be dissimilar to other surgeons or even other practitioners as well. 20

What, you thought it was acceptable for a surgeon, in the position of Dr Patel, not to be flexible and not to discuss alternative clinical options for patients?-- I didn't say it was acceptable.

Well, what is it?-- It is a characteristic of his behaviour and his thinking in these situations, but I think you would find practitioners of his age and experience would not - would not be dissimilar in this type of situation. 30

COMMISSIONER: Dishonest? Would that be a common characteristic of a doctor in his situation?-- I think you will find that has been - as regards his surgical actions in the care of patients, I think there are some - particularly amongst surgeons, find it very hard to admit some of their mistakes, yes. Whether that's then construed as dishonesty. 40

MR DOUGLAS: "Reluctant to admit his own mistake or error in care of patients". You thought that that was a matter which you should allow just to go through to the keeper, for this surgeon practising on a day-to-day basis at this time in your hospital?-- I think it was acceptable. It required review by an external reviewer within the context of medical errors, and what we know about medical errors there is a relatively high proportion of this, they have previously been poorly recorded, poorly studied, analysed, and they still continue to occur, and I did not believe that Dr Patel was alone in this type of situation. 50

You didn't think he was alone in being completely accountable and honest about his surgical actions?-- As I said previously, there are those surgeons who find it hard to admit that they have made an error or a mistake, and whether that can be then termed dishonesty is open to interpretation, but there are those - there are those practitioners who don't

always - are not always completely accountable for their actions.

1

Read again what I have marked as item 5 starting with the words "He felt that Dr Patel", down to the words "honest about his surgical actions". Read it to yourself. I suggest to you that there was no other surgeon than Dr Patel at Bundaberg Hospital working there in the entire time you were there, from early '03 to April '05, who that could be attributed to?-- I would disagree with that.

10

Oh, there is someone else is there? Who else is there?-- I believe that, yeah, there was certainly at least one other - there was at least one other surgeon I believe had some complications and was-----

Well, before you name this person, I want you to be clear about this, because I am going to ask you who it is. You are saying that this person was a person who "made categorical statements" - I will leave that out for the sake of it - "is a person who didn't appear flexible and wouldn't discuss alternative clinical options; who appeared reluctant to admit to other doctors his own mistakes in the care of patients; and didn't appear to be completely accountable and honest about his surgical actions"?-- I am not - I am talking - I am only talking about reluctance to admit mistake or error.

20

COMMISSIONER: No, no, the point is whether there is any other surgeon in Bundaberg?-- No, there is no other surgeon that I am aware of that would fit all those.

30

Any surgeon that you have struck anywhere in your career who would fit all those characteristics?-- I would have to think but-----

You can't think of anyone at the moment anyway?-- No.

MR DOUGLAS: And your career dates back to - well, some time after 1986 when you graduated?-- Yes.

40

Almost 20 years?-- Yes.

Look at item 6: "He believed he could continue to work with Dr Patel in the future."?-- Yes.

That was the one of the items that your counsel, Mr Diehm, pointed out to the Commissioner earlier?-- Yes.

That's all you wanted, wasn't it? You just wanted staff to continue working with this surgeon who was providing the elective surgery procedures at the hospital on a day-to-day basis?-- He was providing more than elective surgery.

50

He was certainly providing elective surgery and he was also providing emergency surgery?-- Yes.

Whatever surgery patients requiring treatment from an expert surgeon required at Bundaberg Hospital, correct?-- No, there

was - as regards general surgery - as regards general surgery conditions. He was not working in areas of orthopaedics or-----

1

I accept that?-- -----neurosurgery.

Thank you, but within the area of general surgery people were coming in for various procedures and it seems now, with the benefit of hindsight, if they were unlucky enough they got Dr Patel, correct?-- Yes.

10

Thank you. Could we go to the next item, thank you? It is page 167 of the bundle. Again you will see it on the overhead, Dr Keating, and I have marked it in a similar fashion, if that assists. This is a meeting which occurred on the 2nd of November 2004?-- Yes.

It is a meeting with Dr Risson, again attended by Mr Leck and by you?-- Yes.

20

The same context is noted?-- Yes.

Dr Risson, what was his specialty?-- As it says up the top there, he was a principal house officer.

Says "PGY3"?-- Yes, basically that means he was third year. Postgraduate year 3, after he has graduated.

Again, these minutes were prepared by you?-- Yes.

30

Did you know Dr Risson prior to this meeting?-- Yes, I did.

Did you consider he was a man of apparent integrity?-- Yes, I did.

If you look under the heading "response", I have marked as item 1, and I have highlighted the following: "Dr Risson expressed concerns related to transparency of the current surgical audit process conducted in the surgical department where he believed there was a lack of structure." Correct?-- Yes.

40

Can you recall what he was talking about in that respect, a lack of structure in the audit process?-- I - he is talking about the use of a manual reporting system within the department and what was being reported and what was being discussed.

And-----?-- He didn't feel it was formalised.

50

I interrupted you?-- Didn't feel it was as formalised as it could have been or recorded as well as it could have been.

How did that relate to Dr Patel, as you understood it?-- It was - Dr Patel was the Director - the Director of Surgery, he was responsible for the implementation and continuing of these - of this structure and process.

So this was a criticism which you understood was directed to Dr Patel's administration as Director of Surgery?-- Yes, I did.

1

Thank you. Could I go to the next item, thank you, marked number 2? I have highlighted. If I could precis it, he said, that is Dr Risson, "he had a concern which he said was shared by the nursing staff about the apparent number of postoperative complications including infection"?-- Yes.

10

Do you recall asking him for any details about that?-- I don't.

It was a comment which he was directing to Dr Patel?-- Yes.

You didn't ask him why it was that he was saying that about Dr Patel?-- I can't recollect that.

The next item which is marked 3 and I have highlighted, he recounts to you, as he put it "hearing", so it seems it is secondhand-----?-- Yes.

20

-----"about a case where a CDP line was inserted by Dr Patel and had pierced the "SVC". Do you see that?-- Yes.

What's the SVC?-- Superior vena cava.

And that it was said again, apparently repeated secondhand, that that ultimately led to the patient's death?-- Yes.

30

Didn't ask him for any details about that?-- That's all the information he could provide at that stage.

That wasn't a matter that you wanted to follow up?-- He - that was all he could remember. He couldn't remember - he couldn't remember much more about that, more that the incident had occurred.

That would appear, to the uninstructed or untutored reader, to be a fairly serious allegation?-- The insertion of a central venous line into a patient always has inherent risks and this was one of those risks, certainly a very significant outcome of this procedure.

40

Didn't think it appropriate to chase that down?-- No, I didn't. I was aware it was a known complication of this procedure.

Whether it is a known complication or not, if it occurred and it did lead to a patient death, that's a matter which you ordinarily discuss with the surgeon in question?-- No, I would not.

50

You wouldn't?-- No.

COMMISSIONER: Dr Risson obviously thought it was a matter of concern?-- Yes, he did. I think he was - he was more concerned about the fact that he consented for this procedure

and that the patient had died, and I think he talked him through the procedure, and it is a procedure that's done on many - many occasions and vast majority of people have a very good outcome but there are a number of people who do have complications related to this.

1

You have told us that several times but here you are speaking about Dr Patel's clinical competence. That's what you asked him to talk about?-- Yes.

10

In that context he remembered this case?-- Yes.

So he is obviously implying doubts about Dr Patel's clinical competence in this case?-- I think he was concerned about his skill in doing this procedure at this time.

Yes. And that that might have led to the patient's death. The lack of skill may have led to the patient's death?-- Yes.

And I didn't see any need to follow that up?-- Well, he could - no, I didn't follow it up.

20

MR DOUGLAS: It would have been a reasonable and sensible course for you, to follow it up, wouldn't it?-- I think you would find this was also - this was referred in the letter from Toni Hoffman and that this case - this is one of the cases referred to in Toni Hoffman and that this was one of the ones that needed to be reviewed.

So all bets are off until the external reviewer provides the report; was that your attitude?-- I believe that it was appropriate to get that, and that was - as I said previous, is what was - how it was being managed by Mr Leck.

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COMMISSIONER: And Dr Patel in the meantime could continue to perform this procedure?-- This is a - yes, this is a procedure that's done by, you know, from specialist level down.

But you were permitting Dr Patel to continue that procedure notwithstanding the expression of lack of confidence in the procedure in that case leading to death expressed by Dr Risson?-- Yes.

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MR DOUGLAS: If it happened again tomorrow and you were the DMS of the hospital, you would certainly be following it up, wouldn't you?-- Sorry, what would I be following up?

An instance like that, reported to you?-- Yes, yes, I would. Taking into account the fact that here is a procedure that has complications, yes, this is a major complication and you would want to know the full details of what had occurred.

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And that was your mindset at the time you were undertaking this interview with Dr Risson? You were of the same view then as to the nature of this complication?-- I don't believe - I don't believe I was of that mindset. I was aware, as I said, that Dr - that he talked about this case which reflected the

one in Toni Hoffman's letter and that it was a complication that had to be reviewed. The serious nature of it, in retrospect, certainly knowing a lot more of the information, I would have jumped - I should have jumped on it, or would have jumped on it more if I knew more information. The problem was there was very small amounts of information which wasn't all lining up exactly.

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And you get more information by asking for it?-- Sorry?

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You can get more information, if you are DMS, by asking for it?-- Yes, you can.

Look at the last item marked number 4. "Dr Risson described Dr Patel as a person who could be flighty and occasionally unpredictable"; that's correct, as it is recorded there, anyway?-- Yes.

And also that, in Dr Risson's view at least - I am sorry, Dr Risson told you that "the resident staff believed that Dr Patel was very severe in reprimands, particularly for minor issues"?-- Yes.

20

That's more of a management issue?-- Yes.

Okay?-- And also probably experience as well. Some of these resident staff may never have experienced that as well.

This is the Director of Surgery being described to you, of course?-- Yes.

30

Okay. Can we look at the next item, please? It is page 168 of the bundle. This is the interview, in like fashion, with Dr Strahan. Now, that was undertaken on the 5th of November 2004?-- Yes.

You prepared the minutes?-- Yes.

You knew Dr Strahan on that date?-- Yes, I did.

40

You had known him for some time?-- Yes, I had.

He was a visiting medical officer and a specialist in general medicine?-- That's right.

You had known him since commencing at the hospital?-- Oh, shortly thereafter.

He was a person whose view you respected?-- As a clinician I respected his views as a clinician.

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Thank you. Now, there is an opening passage under the heading "response" where Dr Strahan refers to a lady from Biggenden who was admitted to the hospital. If you go down to my item 1 which I have highlighted, you have Dr Strahan apparently expressing the view, as you have recorded it there, that "that case showed Dr Patel was rigid in his thinking and judgment, being unwilling to be flexible as new evidence came to hand".

That's what you have recorded?-- Yes.

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It seems that this lady was sent home and returned for a Whipples operation but unfortunately she died several days after the operation?-- Yes.

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But again, going back to that earlier sentence, you had this particular practitioner, Dr Strahan, expressing the view that your Director of Surgery was unwilling to be flexible as new evidence came to hand?-- Yes.

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Reflecting, as it was expressed, rigidity in thinking and judgment?-- Yes.

You hardly saw that as a bouquet being tossed in Dr Patel's direction?-- No, it was not bouquet in his direction.

10

Indeed, it was quite consistent with the news the other two doctors had expressed to you on previous days?-- Yes.

If you go down to item 3 that I have marked there, that's a record that you have made that Dr Strahan opined that Dr Patel had an aggressive and assertive personality. That's what you have recorded?-- Yes, I have.

Again, that was consistent with what the other two doctors had expressed?-- Yes.

20

That was consistent with your own observations of Dr Patel?-- Yes.

Dr Strahan told you that the local specialists felt certain things about Dr Patel being a person who'd come from the United States, and you go on to record that Dr Patel was given authority - I should say, "Given appropriate authority supported by management which he had used to reduce surgical waiting lists."?-- Yes.

30

Did you inquire of Dr Strahan what he was speaking about when he spoke of "appropriate authority"?-- He was talking - he was talking about the fact that he was the Director - he was appointed as Director of Surgery.

You went on to say then at item 5, as I have marked in that document, "In Dr Strahan's view, Dr Patel appeared to operate without some form of peer review." That's what you have recorded, isn't it?-- Yes.

40

Did you inquire what he meant by that?-- He was talking about peer review by other surgeons.

So, Dr Strahan was expressing the view that Dr Patel was operating as the general surgeon at Bundaberg Hospital without any form of peer review?-- He appeared to be operating without any peer review. He was unsure because he was a physician.

50

You knew that to be true, in any event, from your own observations as you have told us earlier?-- Yes.

All right. Yes, that can be returned to me, thank you. I suggest to you that after you concluded those - that series of interviews, concluding the 5th of November 2004 with Dr Strahan, that there was nothing from those interviews which

contradicted anything that had been alleged by Ms Hoffman in her letter of the 22nd of October 2004?-- Yes, I'd agree with that.

1

So, to use your language from earlier, your own investigation with Mr Leck, while you make inquiries, these three surgeons had afforded some corroboration of the complaints of Ms Hoffman?-- Yes.

I suggest to you that by dint of that, that would have served only to heighten your concern about the maintenance of Dr Patel providing surgical services on an ongoing basis at the Bundaberg Hospital?-- Yes.

10

Why didn't you recommend to Mr Leck at that point - that is, on or shortly after the 5th of November 2004 - that Dr Patel ought refrain from undertaking surgical services at the hospital until the completion of the external review?-- Based on the information, there was a number of allegations - there were a number of instances over a large number of patients that he'd operated on and it was very - it was only a small number of instances in each case that these people had represented. Combined with what Toni Hoffman had added to, it required further - definitely required further review. I, in reflecting back on this, do not believe that there was enough there or enough information, comparative data, and a full audit and assessment to have him stood aside at that stage. I was also - I think it was made harder by the fact there was no process about how to truly investigate the allegations that were made by Toni Hoffman in this situation well within the Queensland Health structure organisation.

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On the 5th of November 2004 what was your expectation as to when the external review would have been completed?-- My expectation would have been done as quickly as possible.

What's that? What was your expectation? What was in your mind?-- I wasn't - at that stage I wasn't organising it - I wasn't organising that. But 5th of November, I would have liked to have seen something done - you know, something done by the end of November or the start of December.

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COMMISSIONER: Did you have any real knowledge that that might occur within that time?-- No, I didn't have any real knowledge.

You had no idea when it might occur?-- It was-----

It might be months?-- I wasn't across all details, Commissioner. As regards-----

50

As far as you were concerned it might have been months?-- I didn't believe months. Didn't believe months, Commissioner. I-----

You had no indication less than months?-- Weeks to six weeks, Commissioner. I was not expecting months.

MR DOUGLAS: Did you ever ask anybody when it would be done by?-- I was speaking to Mr Leck. He was speaking about how he was trying to get these - get this done. He was finding difficulty in identifying an appropriate person and getting them released. I certainly - after the 5th of November I expected it to be done quickly once these other issues came up. It was taking some longer time.

1

And it took a longer time. Say you got to the end of November, did you think to ask Mr Leck, "Oh, by the way, when is this external review going to be completed?"-- I had a number of conversations on a regular basis with Mr Leck. I can't - and/or e-mails. I can't remember, I think he did send me e-mails related to this. I was aware - I had already - was aware he had been speaking to the District Manager from Logan/Beaudesert and also had spoken to the Audit and Operational Branch.

10

And eventually it was decided that you were told by Dr Leck that Dr FitzGerald, the Chief Health Officer, would undertake the audit?-- Yes.

20

And you were told that in December of 2004?-- Exactly when it was, whether it was before or after - before Christmas or after Christmas-----

Nonetheless, after the 5th November 2004, the days became weeks became months and still you knew that this reviewer hadn't even come into the hospital-----?-- Yes.

30

-----to request the information in order to produce an ultimate report?-- Yes.

And all the while Dr Patel's continuing to operate-----?-- Yes.

-----in the teeth of allegations of the 22nd October letter and the subsequent corroborative material that you'd garnered?-- Yes.

40

Did you just put it out of your mind, Dr Keating?-- It was one of many things I had to deal with.

One of many things yet, can I suggest to you, an important matter nonetheless?-- It was important - yes, it was an important matter but there was other issues, people - you know, multiple concerns that had to be dealt with on a regular basis and an ongoing basis, and at the end of that year we certainly had significant other problems as regards workforce. So, yeah, it was one of many issues that I was having to deal with. But, as I said, it was - and I think in that time there was also the tilt train incident and, as I said, I was very much responding to Mr Leck and his management of this situation.

50

Please consider this proposition carefully. I suggest to you that in failing to direct Dr Patel or suggest to Mr Leck that he direct Dr Patel to refrain from providing further surgical

services, at least until the conclusion of the external review, was a dereliction of your duty as Director of Medical Services at Bundaberg Hospital?-- I do not believe it was a dereliction of my duty. I - in reviewing this situation I would have - would have done things differently or pushed Mr Leck or suggested to Mr Leck that greater restrictions be placed on Dr Patel. Based on the information we had at this stage - as I said, there was also some other information which was not giving us that clear picture and there is no doubt with all the information that's now come out from the Inquiry that may - may have been the more appropriate step to take. But at that stage with what information we had, I would have recommended - you know, could have - I - on reflecting it, I would have recommended that he have restrictions placed on his practice.

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COMMISSIONER: What sort of restrictions?-- Complex cases.

Only complex cases?-- Complex cases requiring ICU care and potentially work through some of the - you know, some of the procedures we was working on - doing.

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Like what?-- He was - across the general surgery sphere.

MR DOUGLAS: You-----

COMMISSIONER: Sorry.

MR DOUGLAS: Very sorry, Commissioner.

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COMMISSIONER: You became aware later from Dr FitzGerald's report that in the performance of a routine operation, not a complex one, a routine operation, Dr Patel had 25 times the complication rate of the average? You saw that from Dr FitzGerald's report, did you not?-- Sorry, which part? I can't recollect what part.

When he was looking at comparative statistics on complication rates?-- I'd have to be taken to that part, Commissioner.

40

You didn't ever see that?-- 25 to 25 times?

But for routine surgery.

MR DOUGLAS: In respect of laparoscopic cholecystectomies, he made an observation in his report that the complication rate of Dr Patel at the hospital was approximately 8.5 or the like, but the Australian average was approximately .25 or thereabouts. Do you recall that comparison made in Dr FitzGerald's report?-- I can't recall that. I'd have to look at that. As I said, I did not see that annexure 1 until some - a lot - quite late.

50

COMMISSIONER: But the complaints which you had received about Dr Patel's complication rate did not relate only to complex surgery?-- The major ones related to oesophagectomies and Whipples operations. There was some concern about wound dehiscence, which is from a wound perspective. There was -

you know, there was - there was a number - I think there was a number in the - in different areas, but it wasn't - it wasn't across the board and obviously needed some comparative data, both with other hospitals and data that's been validated by clinicians. Unfortunately some of this information has not been validated by other clinicians as well at the - and the information that Dr FitzGerald was relying upon.

1

MR DOUGLAS: Not only did you not wait until the external review was produced - I will ask - I will ask that question again. Not only did you await then external review before exercising any curtailment of Dr Patel's surgical practices, on the 24th of December 2004 you offered him a job; isn't that so?-- He was offered - he was offered an extension of his contract, yes.

10

You offered him a job in writing?-- Yes, I did.

On the 24th of December 2004 you offered him a contract which would commence at the end of his current contract?-- Yes.

20

Which concluded 31st March 2005?-- Yes.

Which would take him up for a period of four years-----?-- Yes.

-----till 2009?-- Yes.

Did he ask for a four year contract?-- He asked for a four year visa.

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Did he ask for a four year contract?-- He asked for a four year visa. At that stage we believed the way to get the four year visa was to get the four year contract. It was an error that we - there'd been changes to immigration rules related to visa class that overseas trained doctors could be employed under and allowed them to get a four year visa. We thought you required a four year contract to get that four year visa. So we offered that to him. Combined with the fact that I'd delayed - he'd approached me in October and I had delayed providing any contract to him until he came to me just prior to the Christmas break and - asking for some form of - something in writing.

40

Let me just understand your answer. Do I understand you to say that you believed that Dr Patel if he wished to remain in Australia after the 31st of March 2005 when his contract with Bundaberg Hospital concluded, but he wished to work in that hospital, that same hospital Bundaberg, or another hospital, that he had to apply for a four year visa?-- No. He requested - he requested a four year visa.

50

From whom, from DFAT, the Commonwealth authorities?-- No, it's not in DFAT, it's from DIMIA. Basically the process is he has to have a sponsor and the sponsor is usually an employing agency, so he requested that we in the first instance - we being Bundaberg Health Service District - apply for sponsorship for four years.

Did he ask you?-- Yes, he did.

1

And you were prepared to accede to that?-- As I said, he asked for that in the October. He approached - approached me prior to Christmas pushing very hard to get something in writing, and I agreed to a contract of four years which would - which I thought would allow him to access the four year visa.

10

Why not offer him nothing in light of what you knew at that point at the end of December 2004 and plough your efforts into garnering the servicing of another surgeon?-- At that time, he (a) was very insistent on getting something in writing; (b) I knew it would take some time to go for him - for the application process to go through, and that it - and, yes, that ultimately it would need to get somewhere - it would be potentially even longer and we would have a gap where we would not be able to provide any surgical service.

20

Better to provide no service than provide a service from a less than satisfactory surgeon, do you agree?-- I agree, based on information we have now learnt about him.

On the 24th of December 2004 when you made this joint job offer, I suggest to you that at the very lowest you saw that there was a big question mark over the future of Dr Patel as a retained surgeon at Bundaberg Hospital?-- Yes, I did.

You offered him a four year contract?-- I offered him a four year contract for a four year visa, yes.

30

You think that was a reasonable course for you to adopt?-- At that time, yes.

You say in your statement this, "While concerns have been raised by Toni Hoffman, those concerns were yet to be investigated and verified. Review of Dr Patel's contract would not prevent any further disciplinary or remedial action being pursued, including termination of his contract. However, if arrangements were not put in place to renew his contract or to find a replacement in the near future, then the hospital would find itself without a senior surgeon."?-- Yes.

40

I have recited that, I think, correctly from your statement?-- Yes.

One of the alternatives you raise there is - I'm sorry, I will start again. You say it was yet to be investigated or verified. You had, in fact, undertaken some verification in the corroboration investigation that you and Dr Leck had undertaken in early November 2004. That's correct, isn't it?-- We'd done some - what I would term some preliminary corroboration, yes.

50

Preliminary corroboration had really set up Ms Hoffman's allegations as a prima facie case of apparent incompetence on

the part of Dr Patel?-- I believe that it did not reflect total incompetence on his behalf but it reflected areas of weakness or deficiency. At the end of the day, that was my belief, but I was then on - I was not a surgeon and it really needed a surgeon or surgeons to review that properly.

1

In the portion I read out in your statement, you posit as an alternative to putting in place a new contract with Dr Patel finding a replacement in the near future?-- Yes.

10

You were referring to finding a replacement surgeon?-- Yes.

Even if in early December 2004 you had commenced endeavours to retain another surgeon, that would have given you four months to find someone?-- To find a surgeon, it does take a long period of time.

It gave you four months not just to find a surgeon, but also to make arrangements on what you then proposed to do in relation to Dr Patel - leaving him there to make arrangements for perhaps - others perhaps within the local community of surgeons within Bundaberg to provide temporary services?-- Providing temporary service is one option. The problem with that is that you really need an end date for that. They - you are using goodwill and you need an end date for that and potentially if that end date is open they may be reluctant to commit themselves to that. This was also exacerbated by Dr Gaffield leaving as well.

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COMMISSIONER: Dr Keating, Dr Patel was economically valuable to you, wasn't he?-- He - he was a surgeon - he was a surgeon who performed surgical work which included elective surgery for which we got payment for.

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He was getting through the elective surgery list by doing quite a lot of complex operations and ensuring that you would make your elective surgery target if he continued until the end of the financial year?-- He was one of the surgeons who contributed to that. He was - I think he only did 20 per cent of the elective surgery work and that in fact I think we did four oesophagectomies and a couple of Whipples and I think the number - the weighting for those is very small, and we are talking about a large target. Yes, he was a component of that but it would not have made a huge difference from that, from our - the perspective of Bundaberg Health Service district. If you are talking about weighting, joint replacements are far better value and in fact that's where we were concentrating our efforts.

40

He was the most effective in getting through the waiting list, wasn't he?-- He was effective in reducing the elective surgery - in reducing the waiting times and providing the elective surgery to patients on that list. He was also, in conjunction with Dr Gaffield, very good at providing extra outpatient services for people who'd been on waiting lists, as I said, for two or three years and it may have been even three or four years.

50

He was economically valuable to you in making your elective surgery target to ensure you didn't lose money for the next financial year?-- That was one consideration, Commissioner. The major consideration was providing these people who had elective - providing surgery to patients who had conditions which required elective surgery who had been on that list for prolonged periods of time who were demanding access to that service. Yes, he helped contribute to that but it was all providing a service to these local residents of the area, which was far more important than the dollar perspective. The dollar perspective was there but it was secondary to providing the service.

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Okay.

MR DOUGLAS: Dr Patel went on leave on 27 December 2004?-- Yes.

And he did so for a period of about 10 days?-- I think it was 10 to 14 days, yes.

20

Were you concerned if he didn't make him the job offer, which we have already canvassed, that he wouldn't come back?-- No, I was not concerned that he wouldn't come back.

You were confident, even without the job offer, that he would return after the Christmas break?-- Yes.

Referring to paragraph 261 of your statement to the fact that in early January 2005 you conducted a review, as you put it in your statement at that point, of the incidents which had occurred during his - that is Dr Patel's - tenure?-- Yes.

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And you say that after considering those matters you discussed the matter with Mr Leck?-- Yes.

And you recorded your views resulting from your introspection to Dr Leck during that period?-- I think they were pertaining to Dr Patel.

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Dr Patel during that period?-- Yes.

At the conclusion of your considerations you formed the view and you advised Dr Leck that the best option was for Bundaberg Hospital to recruit a new Director of Surgery, and I will quote you from your statement, "As soon as possible and in the interim further boundaries in relation to Dr Patel's surgical practice would be developed."?-- Yes.

You advised Dr Leck - I should say Mr Leck to that effect on a couple of occasions, I think first on about the 5th of January and again about the 10th of January, or thereabouts?-- I think it was around about those dates.

50

And there was the meeting which you subsequently had with Dr Patel when he returned on about the 13th of January?-- I had - I had a separate meeting with him and we had one with myself and Mr Leck.

I will come to those meetings in a little while.
Notwithstanding the views which you formed at that time, as I have just taken you through, you were content for Dr Patel to continue to provide operative services at the hospital until 31st March 2005?-- With restrictions.

1

And, in fact, it was within your contemplation in that period in early January 2005 prior to the meeting with - or meetings with Dr Patel that you may, in fact, invite him to stay on for some time after 31st March 2005 in the event that you were having difficulty obtaining the services of another surgeon?-- No.

10

You weren't contemplating that at all?-- I wasn't contemplating asking him, no. He was very upset after the meeting of, I think, 14 January - sorry, 13 and he told us that he would place his resignation in and he was very - yeah, upset, so it was not me focused on speaking to him, as I said earlier. He approached me 10 to 14 days later.

20

You are speaking then about the further job offer that came in late January 2005?-- Yes.

I will come to that. Can I remain with your ruminations of early January 2005?-- Yes.

Could I take you to, please, page 183 of the bundle to your statement?-- Yes.

30

Again I will adopt a similar procedure to that which I did before and ask this document be put on the visualiser with some highlighting. Thank you. The document, which is Exhibit DWK66, starts at page 183 and concludes at page 188. Thank you. Apart from the formal heading, it's, "Incidents During Tenure", and you mention a number of items. The first item I have highlighted is the oesophagectomy history of surgery arising from Dr Patel's tenure?-- Yes.

There were four instances of oesophagectomies being undertaken by Dr Patel?-- Yes.

40

The last of those concerned Mr Kemps, to whom we made reference earlier?-- Yes.

If you can just scroll up, please. There's a number of items there but do you see in the middle of the page towards the top of the portion now illuminated on the visualiser there's a reference to - in the last sentence - "Director of ICU, Mater Private, rang to express concern", et cetera?-- Yes.

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Do see that? That's a reference to your conversation with Dr Cook?-- Yes.

Of the Mater Hospital?-- Yes.

1

That occurred in mid 2003?-- Yes.

You refer then to various discussions you had with Dr Patel about the capability and capacity of ICU?-- Yes.

That's the ICU at the Bundaberg Hospital?-- Yes.

In the next sentence what you're seeking to record is that you, Dr Keating, at that time, which was mid 2003, explained to Dr Patel that the ICU at Bundaberg Hospital was a Level 1 ICU and that it operated only at Level 2 only for short periods of time?-- Yes.

10

You then go on to record that Dr Patel indicated nonetheless that he believed he could undertake oesophagectomies and that the post operative care could be provided?-- Yes.

So you acceded - what you're recording there is to not just the various discussions that led to your conversation with Dr Cook, but also to your advice to Dr Patel along the lines you'd just indicated and, in effect, Dr Patel's rejection of that advice?-- No. I - yes, I explained this information to Dr Patel and I was of the understanding that if the operation had no complications, that the patient would spend a short period of time on the ventilator, up to 72 hours and therefore this, you know, it was at the - it was, it was not outside what had been expressed to me and I should say I also gained this information from Dr Carter and who was the Director of Anaesthetics in ICU.

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You're recording it here though because on reflection you considered that what Dr Patel had told you at this time really was unsatisfactory?-- Sorry, that what specific part was not satisfactory?

That he told you that, in effect, that Bundaberg Hospital could cope with the post-operative care that ought be provided or that might be needed by a patient undergoing oesophagectomy at that hospital?-- He told me that in conjunction with the Director of Anaesthetics in ICU.

40

But you are writing in this document because you are concerned on reflection that information was inaccurate?-- No, I don't think it was inaccurate, it was accurate from the fact that if the patient didn't have complications, but if a patient has complications, that time extends significantly.

That's the difficulty, isn't it, because if you undertake an oesophagectomy procedure at the Bundaberg Hospital or a hospital the size of Bundaberg with a Level 1 ICU, that if there are post-operative complications that unfortunately occur, Bundaberg can't cope with that patient?-- They may not be able to, it - depending on what other patients are in that ICU.

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That wouldn't occur, ordinarily if it happened in a

metropolitan hospital because the ICUs in those hospitals are of a higher level ICU?-- Yes.

1

If you could scroll over please, there's a couple of pages, I believe where I've marked matters. Just briefly under the heading "Renal Unit" you've noted in these notes that concerns were raised about Dr Patel's personal infection control measures in relation to insertion-----?-- Yes.

-----and/or manipulation of central venous lines. If you could go to the last page please where there's a heading, I think, of "Summary". If you just go to the previous page briefly please? Do you see a heading at the bottom of the page "Consistent Concerns"?-- Yes.

10

Thank you. If you go over the next page? Under that heading, "Consistent Concerns", you have recorded your view at that time of Dr Patel's capacities as a clinician at the hospital?-- That's right.

20

Just read it to yourself and I'll ask you some questions about it. When you're ready, please tell me?-- Yes, I'm ready.

Thank you. You were of the view - I'm sorry, I'll start again. You were expressing these views sometime between the 1st of January and about the 10th of January or thereabouts?-- Probably started a bit before that.

Thank you. It doesn't matter?-- Yeah.

30

It was sometime after Dr Patel went on leave on the 27th of December 2004 and about the 10th of January 2005?-- No, it was before Dr Patel went on leave.

Before he went on leave?-- Because I think you'll find he includes the tilt train collision because it built up over time as more information came, as I remember, more information came, he put it in, I think I wrote this as a conclusion from it.

40

I want to ask you when it was that you formed in your mind the views that are expressed under that heading "Consistent Concerns"?-- They were - would have been formed - they were formed in the period you're talking about, around about Christmas/New Year, early January period, they were fairly cemented or confirmed in my mind.

Would it be correct to say that you were of the views expressed in this document by the 5th of January 2005? I'm happy to select another date if you wish?-- Oh, the 5th of January or thereabouts, yes.

50

At the latest the 5th of January?-- It may have been a bit - I'm just trying to think about all of the parts that are in it.

Well, I can give you some assistance, just scroll down the document please? If you go towards the base of this document,

and it may be that you put these in later, I'm not sure, do you see there there's an item about six paragraphs up from the bottom, "As per conversation with DM" - that's Mr Leck - "of 4th January 2005, I informed him of these thoughts about Dr Patel."; do you see that?-- Yes.

1

And the next paragraph, "Reinforced above advice to District Manager on 10th January 2005."?-- Yes.

Can I suggest to you therefore that-----?-- 5th of January.

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-----by the 4th or 5th January 2005 you were of the views which were expressed above that paragraph commencing where you referred to the conversation with Mr Leck on the 4th of January 2005?-- Yes.

Coming back then to the top of the page; you've read it?-- Yes.

On the 4th of January 2005, you were of the opinion as the Director of Medical Services Bundaberg Hospital that Dr Patel over-extended himself in performing a limited number of certain major sub-specialty operations?-- Sub-specialty operations, yes.

20

You were also of the opinion on that date that Dr Patel delayed transfer of seriously ill patients to Brisbane?-- Yes.

You were also of the opinion on that date that Dr Patel's manner is perceived by many staff at Bundaberg Hospital at all levels as being arrogant, abrasive, rude and potentially abusive?-- Yes.

30

You were also of the opinion on that date that Dr Patel had multiple responsibilities with the result that there was potential for fatigue and errors in his judgment?-- Yes.

Can I go down under the heading "Summary" therefore and put the same proposition to you, by reference to that date, I suggest to you that on the 4th of January 2005, you were of the view that Dr Patel was a very knowledgeable surgeon with many years experience of general surgery?-- Yes.

40

You were of the opinion that whilst he may have been probably very good to excellent technically in his previous career in the United States, he was now a good to very good surgeon?-- Yes.

You were of the opinion, however, that he had not maintained currency in some major thoracic and abdominal procedures or in all aspects of care of critically ill patients?-- Yes.

50

You were of the view that he had a positive attitude, a very positive attitude to work?-- Yes.

You were of the view that his cumulative work, stress and fatigue plus multiple responsibilities contributed to him

being a specialist surgeon who had more potential to make errors of judgment in clinical care, particularly in relation to seriously ill patients?-- Yes.

1

You were of the view that Dr Patel was unpopular and potentially without the support of many clinical staff at the hospital; correct?-- Yes.

You were of the view that you were uncertain whether or not Dr Patel would be able to modify his behaviour to reduce that tension that had developed with staff; correct?-- Yes.

10

You were also of the view that there were a large number of staff actively undermining the continuing efforts of Dr Patel to provide a general clinical service to the people of Bundaberg?-- Yes.

That summary contains a mixture of the positive and the negative; is that fair to say that?-- Yes.

20

I suggest to you that those aspects of it that are negative are such that you as the Director of Medical Services ought have been moved to immediately cease his practice as a surgeon undertaking clinical surgery at the Bundaberg Hospital?-- I do not believe so, as I said previously, I believe that there should have been further restrictions placed on his situation and review of his responsibilities to reduce his situation and also to ensure that fatigue, the fatigue factor was reduced as much as possible.

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You were concerned - I'll put it another way. You were of the view at this time on the 4th of January 2005 that Dr Patel's clinical judgment was flawed?-- I was of a view that there were a number of stressors which could lead to his clinical judgment being impaired, particularly in relation to seriously ill patients.

Whatever the genesis of it, whether it be stress, whether it be incompetence doesn't matter, you were of the view ultimately that his clinical judgment was flawed?-- I was of a view he could make errors in his clinical judgment, I did not believe that his clinical judgment total was - at that time I did not believe that his clinical judgment in total was, you know, as you've described.

40

Were you prepared to tolerate him having the potential for errors in his clinical judgment, having regard to the features you identify?-- I was not prepared to tolerate that situation or prepared not to tolerate that situation without changing the situations which led to that situation. Now, in this situation I believe that there was ways to go about reducing the opportunity for errors to occur. Errors of judgment occur in clinical care to a smaller or lesser degree, but Dr Patel had that occur.

50

Did you at any time prior to him ceasing, that is, Dr Patel ceasing at the Bundaberg Hospital, reduce his multiple responsibilities?-- Prior to him finishing?

Yeah, prior to him finishing in March of 2003 - sorry, 2005?--
No, no, we didn't.

But you had identified that in this document in the summary on
two occasions?-- Yes.

As being, I suggest to you, the principle genesis of his being
prone or having the potential to make errors of judgment in
clinical care?-- Yes.

Particularly in relation to seriously ill patients?-- Yes,
he's, I think his - I think - I think I outlined his four
areas of responsibilities, being clinical, administrative,
education and supervisory. At the start of the year, we
didn't have any - there was no students, and the supervisory
component continued, the clinical situation was such that we
would make sure that there was the appropriate replacement of
people who went on leave and a careful watch of the roster and
the plan was that as of - if he had taken up that four month
contract, that he would no longer put - undertake all the
administrative responsibilities as Director of Surgery.

Where do I see that? Is there some document you wrote that
down in?-- No, it was a discussion between Dr Patel and I and
I think that he also announced that to other people in the
organisation that he was saying that he would be reducing the
administrative component of his job.

And when did he - when did you have that conversation with Dr
Patel?-- At the time we were discussing that four month
contract.

Just scroll down this document please on the visualiser? You
identify under a heading "Larger Issues"?-- Yes.

Various items at the base of that page, page 5?-- Yes.

You're identifying there the lack of a Royal Australian
College of Surgeons representative on the Credentialing and
Privileging Committee?-- Yes.

Indeed, at this time, the C & P Committee had only met once,
hadn't it?-- No, it had met twice.

I see. It had met for the first time I think in November of
2004?-- It met on two days in November 2004.

The first Credentialing and Privileging Committee meeting that
had occurred in the whole of the time that you were at
Bundaberg Hospital?-- Yes.

And that committee meeting didn't credential Dr Patel, did
it?-- No, it didn't.

Neither of them did?-- No, they didn't, they focussed on the
obstetrics and gynaecologists and the-----

You also identify under the heading "Lack of Peer Review"; do you see that?-- Yes, I do.

1

You mentioned each of those items - I'm sorry, you also mention limited time to audit and review cases due to multiple administrative responsibilities of yourself as DMS?-- Yes.

And you also mentioned limited development of patient safety culture, policy and processes due to lack of resources?-- Yes.

10

You mention those four items in this document?-- Yes.

Because you considered that they were all matters which pertained to your considerations which you've recorded involving Dr Patel?-- Yes, I do.

That is, Dr Patel hadn't been credentialed and privileged; correct?-- As none of the surgeons, but yes.

20

You're going through the items here?-- Yes, correct.

This particular surgeon, Dr Patel, hadn't been credentialed and privileged; correct? That's correct, isn't it? Dr Patel lacked peer review?-- Oh, sorry, I think larger issue, I'm talking larger issues from the organisational perspective, not larger issues related to the individual.

But they're spawn by the Patel issues, are they not?-- They are but larger issues affecting all of the staff, not just Patel.

30

But all of the matters were generated by this instance because of Dr Patel?-- Yes, they were but they were also related to all of the staff, the senior medical staff.

Thank you. Now, if I can go please to your next job offer to Dr Patel. That's to be found in the bundle at page 192 - that document can be returned to me - do you see that?-- Yes.

40

On the 2nd of February 2005 under your hand there is to be found there a job offer whereby you offer Dr Patel a position as a temporary full-time locum general surgeon at the Bundaberg Hospital from the 1st of April 2005 to the 31st of July 2005?-- Yes.

And he accepted that offer, did he not?-- Yes, he did.

If you turn over to page 197, he accepted it on the 7th of February 2005?-- Yes, he did.

50

Thank you. Now, you told the Commissioner that on 13th January 2005, you had two conversations, one with Dr Patel and one with Dr Patel and Mr Leck?-- If I gave that impression, it was a wrong impression. I had one with him when he came back to work, I think on the 10th of January, and then one with Mr Leck and Dr Patel on the 13th of January.

What was discussed with Dr Patel on the occasion on the 10th of January?-- The oesophagectomy.

1

Yes?-- The oesophagectomies and no further oesophagectomies and also the case of P26.

Thank you. What was his reaction to that?-- As regards the oesophagectomies?

Yes?-- He - he was happy with that.

10

The conversation of the 13th of January 2005, that was attended by yourself and Mr Leck and Dr Patel?-- Yes, it was.

What was the substance of that conversation?-- The substance of that conversation was related to concerns that I had expressed to Peter about making sure that Dr Patel be given information about the upcoming investigation and give as much information about that that he could be because it had been organised and I did not believe that he'd been informed about who was doing what, what was going to occur. And so that information was provided, as I said previously, in a very general outline terms and at the same stage we identified that there was issues related to ICU in particular and the care of patients in the ICU and he accepted and agreed that he would no longer perform elective surgery on patients who required post-operative care in the ICU.

20

You say in your statement that Dr Patel said on that occasion that in light of the fact that there was to be an audit investigation, his position was untenable and that he would not renew his contract?-- He was - I think yes, he said it - he said it was untenable because of the fact that he was not given the details, he was aware there was an investigation and that even the form of that investigation was not 100 per cent clear, but he was not given - he was very upset about the fact that he did not have the details on which he could provide any form of response to and he was very upset about, you know, these complaints.

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At the same time as you made to him the job offer for three months which occurred at the end of January, start of February 2005, you wrote a letter to the Registrar of the Queensland - I should say the Medical Board of Queensland?-- Yes.

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Do you see that letter and its annexures contained or commencing at page 204 of the bundle to your statement?-- Yes, I do.

That's signed under your hand?-- It is.

50

The opening paragraph of the letter after referring to Dr Patel says this, "The Bundaberg Health Service District has extended the contract of Dr Jayant Patel to 31 March 2009."?-- It does say that.

You say in your statement that that was expressed in error?-- Yes, it was.

It is in error, of course, because at that date you had no intention of offering him such a contract; correct?-- Correct.

1

And indeed, the only thing that was on offer to him at that time or around about that time in fact or potentially was an extension of several months; is that correct?-- That is correct.

10

If you turn then to the accompanying documents that went with that letter to the Medical Board, the first document consists of one commencing at 205 signed by, apparently by Dr Patel and dated by him 2nd February 2005?-- Yes.

Do you see that?-- Yes, I do.

And did he give you that document for sending that to the Medical Board?-- He didn't give that to me.

20

Who did he give that to?-- He gave that to one of the staff that works for me.

Thank you. Now, if you go to the next document which commences at page 207?-- Yes.

That's a document which in the proforma section thereof is headed, "Area of Need Position Description"; do you see that?-- Yes I do.

30

And your signature appears at the base of the page?-- Yes.

You would have signed that document, I suggest, notwithstanding the date of the letter, on or about the 2nd of February 2005?-- Yes.

You knew that this document and the pages which follow it were being lodged with the Medical Board of Queensland to enable Dr Patel to be registered under an Area of Need position description?-- Yes.

40

Thank you. You believe when you were completing this document and the pages that follow it, that inextricably the Medical Board would be relying upon the voracity of the information that you were providing with this document; correct?-- Yes.

You've already told his Honour that there was, in fact, an error, it's a typographical error, it seems, in the opening paragraph of your letter by which these or with which these documents were forwarded to-----?-- Yes.

50

-----the Medical Board. That's not the only error that appears in this document, is it?-- The only error? No.

I beg your pardon?-- No, sorry, there are other errors, yes.

Thank you, let's just remain at page 207. There's a completed portion of that document adjacent to the box "Surgical"; is

there not?-- Yes, there is.

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If you go to the next page, 208, that page isn't signed by you?-- No, it's not.

There's another page after that assessment form, it's actually two pages, is it not?-- Yes, it is.

And that's been completed by you in handwriting or with ticks?-- Yes, it has.

10

And your signature appears at the foot of page 210?-- Yes, it does.

And you by that signature and your date thereof were attesting to the truth of what appears on page 210 of the bundle and the previous page 209; correct?-- I was - I believe I was attesting to the fact that I had completed it.

You were attesting to the truth of what you'd completed on those two pages?-- I would - I respectfully disagree. I attest the fact that I completed it and that was my handwriting and that was my assessment.

20

Okay, I'll come to it directly. I suggest to you that having regard to what was in your mind by way of information from the 22nd of October or thereabouts of 2004 when you received the Toni Hoffman letter, up until the time when you completed this document for the Medical Board, what appears, what appears on page 207 where you signed it and what appears on pages 209 to 210 is a tissue of lies; what do you say to that?-- I disagree with that.

30

I'll take you to it in detail. Go to page 207. Again, your signature appears at the foot of that page, does it not?-- Yes, it does.

There's a recitation there of the surgical services which it's intended Dr Patel would provide at the Bundaberg Hospital?-- Yes.

40

Is there not?-- Yes, there is.

And then the last sentence reads as follows, "Dr Patel has been in this role for the past 12 months and his performance is rates as excellent."?-- Yes.

Now, obviously the words "rates" should read "rated"; is that not so?-- Yes.

50

Having regard to what information you knew about from the 22nd of October 2004 and as reflected in your written ruminations of early January 2005, it is a lie to suggest that in your opinion Dr Patel could be a person whose performance in this role could be described as or rated as excellent?-- It is not a lie.

COMMISSIONER: What is it?-- I acknowledge that it has

over-rated him dramatically.

1

It's untrue, isn't it?-- I do not believe it was untrue at that time based on a number of allegations from Toni Hoffman with some primary corroboration, and yes, my thoughts about him and there was two aspects, his clinical competence and his interpersonal relationships, and I gave greater emphasis to the problems related to his interpersonal relationships as opposed to the clinical competence causing the problems, but I over-rated him and I acknowledge that I have made a mistake in over-rating him but I was - in no way was I aiming it to be a lie.

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Your opinion expressed there, that his performance was excellent, is just untrue. That was not your opinion at the time?-- I acknowledge that my opinion was - written down here has not translated into this and that the word "excellent" is wrong.

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It was not your honest opinion that his performance was excellent?-- Yeah, my honest - my honest - my opinion was not - that he was not excellent, yes.

10

MR DOUGLAS: If you turn to page 209, you have already agreed with me that your ticks appear in the various boxes there?-- Yes.

See that?-- Yes.

And those reading it can see there is a series of boxes, about 10 in number, which comprehend, it seems, in broad terms matters under three headings: clinical?-- Yes.

20

Communication?-- Yes.

And personal and professional?-- Yes.

Now, in terms of your ratings of him, the highest he rates is performance: exceptional?-- Yes.

And the lowest mark he got from you was "consistent with level of experience"?-- Yes.

30

The next one down from "consistent with level of experience" is "requires further development", is it not?-- Yes, it does.

The next one is "requires substantial assistance", below that?-- Yes.

But you didn't tick him under those last two under any of the box headings?-- No, I didn't.

You have given him "clinical knowledge base", "performance better than expected". Was that your honest view?-- As I said in my statement - as I said in my statement, I have overrated him in all areas.

40

So you admit that all of these, having regard to what you knew, what I have taken you through today, was really an overrating with the possible exception of "teaching", would that be correct?-- I think it was.

Is that correct?-- There was a couple - teaching is one of them.

50

What's the other one?-- I think - I think was-----

Which of these is a correct rating having regard to the matters which you truly knew that you have told his Honour about this morning?-- Time management skills.

That's a correct rating, is it?-- I think that's in the fairly close.

1

Anything else?-- And the teaching aspect.

You have already mentioned teaching?-- Yes. I believe that I have overrated all of these, some more or to a lesser extent. I acknowledge it does not match up with what was said previously.

10

Why would you want to misrepresent the position to the Medical Board?-- I did not wish to misrepresent the position to the Medical Board.

Did you think this was just a nothing document and really the Medical Board didn't deserve to be told the truth?-- The Medical Board deserved to be provided information. At that stage we only had an amount of - information had not been verified in a way that I believe was appropriate that could be fully provided to the Medical Board.

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COMMISSIONER: But by and large these ticks were, as you know, untrue - as you knew at the time, untrue?-- Commissioner, I believe that I have overrated him in these areas. As I said previously-----

That's using a euphemism-----?-- They were isolated.

-----there is none. It was untrue, wasn't it, and you knew it to be untrue, what you said there?-- No, I did not believe it was untrue.

30

All right?-- What I do believe is I have overstated it and that I was looking at a large period of time. There were an isolated number of situations which had been provided but there had also been a large number of patients he had looked for and cared for, multiple situations Dr Patel had been involved in, and I was trying to give a fair and accurate reflection of the totality of work that he did.

40

MR DOUGLAS: But you concede that you overrated him across the Board almost uniformly, nonetheless?-- Yes.

Go to the next page. There is a heading "Supervisors must comment on the following". So you understood you were the supervisor making these comments?-- Yes.

And the pro forma entry was "list strengths". Do you see that?-- Yes.

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Now, you read out to me what you have written there in your handwriting?-- "Dr Patel is a very committed and enthusiastic clinician who has continued"-----

Perhaps "to be"-----?-- "Has continued" - should be "to be a very effective member of staff and Director of Surgery. He has a very strong work ethic which is a model for others. Dr Patel is a willing and effective teacher who has continued

to make strong contributions."

1

The next pro forma item is "list areas for improvement." Do you see that?-- Yes.

And that pro forma entry on the document obviously contrasts or juxtaposes with the previous entry, which is "list strengths", does it not?-- Yes.

And what have you written in that section?-- "Nil significant".

10

I suggest to you that you writing "nil significant" there is a bald face lie on your part?-- It was not a bald face lie on my part.

I want to read to you what appears in the document that I have taken you through at page 187 of the document. Do you recall your views that you expressed were your views as of the 4th of January 2005?-- Yes.

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Do you recall that?-- Yes.

I will read it to you and you can reflect on it as I read it out. Page 187, a document, it seems, you completed about three to four weeks before you completed this document on the 2nd of February 2005. I will read you portions of it, "At times, Dr Patel overextends himself performing a limited number of certain major sub-specialty operations - oesophagectomies, thoracic cases and emergency vascular cases, when appropriate level of intensive clinical support isn't available for prolonged periods. Dr Patel delays transfer of seriously ill patients to Brisbane. Dr Patel's manner is perceived by many staff at all levels as being arrogant, abrasive rude and potentially abusive. Dr Patel has multiple responsibilities, clinical administrative educational and supervisory with resultant potential for fatigue and errors in judgment. He is now a good to very good surgeon technically who has not maintained currency in some major thoracic and abdominal procedures or all aspects of care of critically ill patients. He has a very positive attitude to work which, combined with cumulative work stress and fatigue, plus multiple responsibilities contribute to a specialist surgeon who has more potential to make errors of judgment and clinical care, particularly in relation to seriously ill patients. Dr Patel is unpopular and potentially without the support of many clinical staff, possibly affecting patient outcomes. I am uncertain that Dr Patel will be able or would be willing to change and/or modify his behaviour to reduce associated tension that has developed over the period of his employment at Bundaberg Base Hospital." That's what appears at page 187, doesn't it?-- Yes, it does.

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I suggest to you that the easiest and honest course for you to have adopted on the 2nd of February 2005, was to merely make an uplift of the items that I had just read out on and which you had recorded a month earlier, attach them to this document and said, "See annexure A". What do you say to that?-- I

should have done that at the time.

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It would have been the honest thing to do at the time, would it not?-- I do not believe that I acted dishonestly. I acted in haste and I did not take that - uplift that information that could have been put in that - put in that box.

The Medical Board deserved more than you acting in haste, given what you knew about Dr Patel on the 2nd of February 2005, I suggest to you?-- At that time I did not believe that there was a strong enough case to provide that information but I realise that - that it was very hard because of what it was based on but I realise that it would have been far more appropriate to include this information at that time.

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Do you think also it would have been apt for you to add a rider as well, additional information saying, "And by the way, Medical Board, you need to know that my district manager has asked Queensland Health to undertake an audit review in respect of this gentleman, Dr Patel, and that the Chief Health Officer, Dr FitzGerald, is about to undertake it."?-- That information could have been provided.

20

I suggest to you sensibly and honestly, if you were acting in accordance with those attributes, you would have included that information to the Medical Board?-- As I said, I could have provided that information. I didn't provide that information. I was not setting out to mislead or be dishonest with the Medical Board. As I said, I provided this in haste and it has now come back to bite me on the bottom, so to say.

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I didn't hear-----?-- It has come back to bite me on the bottom, so to say.

Can I quote your statement at paragraph 274? I will read it into the record. It is only brief, Commissioner. "When I completed the assessment of Dr Patel's performance, it was done in haste and in the knowledge that it would be seen by Dr Patel which, on reflection, affected my assessment of his performance. I accept that I overrated his performance in most categories." And to be fair to you, you go on to say at that point, "I did not at this time have so much concern about his clinical skills but I did, in the assessment, overrate his clinical judgment and team work skills." I think I have recited it correctly?-- Yes.

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If I haven't, Dr Keating, I will be corrected by others. Do you adhere to those two statements in your statement?-- Yes, I do.

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Tell us about this portion of the statement where you say that you were concerned about it being seen by Dr Patel? Why was it that Dr Patel would see your assessment form?-- Because if you see there is - sorry, what page is it again, sorry?

204, the letter is, and then there is the accompanying documents thereafter?-- It is page 210.

Thank you?-- Just above the signature block box, "Has registrant had a formal feedback session about this assessment, yes or no?" The expectation from the Medical Board in all these assessments is that this information should not come out of the blue for these people and/or they shouldn't be provided to the Medical Board without the individual knowing about it.

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So let me understand that. How does that respond to my question? Why was it that you thought that Dr Patel would see this?-- Well, because the expectation is that you should provide a copy of this to him before it goes to the Medical Board.

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Did you provide a copy to him?-- Yes.

You did? Personally?-- No, I didn't.

Did you direct one of your staff to give him a copy?-- I can't remember if I directed a member of staff but the usual process is that they see that the individual sees it and signs it before it goes, yes.

20

So you modify your completion of this document because of your concern that Dr Patel may see it and be disturbed by its contents?-- That was one of my considerations, yes.

So you weren't prepared to be candid with Dr Patel as to your views, your honestly held views about his clinical judgment and other attributes?-- Not at that time.

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And to that end, you were prepared to sacrifice the candour that you believed the Medical Board was expecting of you in completing this assessment?-- Sorry, can you just repeat the question?

And is it the case - I will start again. Is it the case that because of your concern that Dr Patel might read your comments, you were prepared to sacrifice giving the Medical Board an honest account in your assessment of Dr Patel?-- I didn't set out to sacrifice the candour but that is an end result of this, this situation. I did not set out to sacrifice that, it was related to treating this individual with some - what I believe was some form of fairness, due process, natural justice, within the overall management of these complaints, which were very serious and required a thorough review, and, in retrospect, knowing what we know now, I should have provided more information to the Medical Board to alert them to the fact of the concerns that were raised.

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You knew that the Medical Board not just registered people, but investigated and deregistered people?-- I was aware that they investigated people, yes.

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And you knew that at the time?-- Yes.

And you knew that Queensland Health was investigating Dr Patel because the Chief Health Officer Dr FitzGerald was about to

embark upon an audit?-- Yes.

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And no doubt if you expressed your true views to the Medical Board as at the 2nd of February 2005, you would have had a reasonable expectation that they may wish to have undertaken an investigation as well?-- I don't know what they would have done. Obviously they would have reviewed that information and potentially, based on my limited - I will say again, limited involvement in these types of situation with the Medical Board, they may have deferred to Queensland Health. That's based on very limited experience.

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COMMISSIONER: Mr Douglas, I see it is 430.

MR DOUGLAS: I was going to stop there in any event.

COMMISSIONER: I wonder if I can get some estimates from the parties how long they will be? What about you first?

MR DOUGLAS: I can give you a reasonable estimate. I would have thought that I would be about another two, two and a half hours. I would expect to finish before lunchtime tomorrow. I hope to go a bit quicker tomorrow than I did today.

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COMMISSIONER: Mr Mullins?

MR MULLINS: I was going to say two hours but I might have a discussion with Mr Douglas and try to go through material that might be duplicated.

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COMMISSIONER: That would be helpful if you could. Mr Allen?

MR ALLEN: I am not confident of being left with anything after my two learned friends have finished. Can I have 30 minutes then?

COMMISSIONER: You can have whatever you think is necessary.

MS McMILLAN: I am even less confident there will be very much left, with all due respect, particularly after what my learned friend has been asking about this afternoon. If anything, half an hour.

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COMMISSIONER: Mr Freeburn?

MR FREEBURN: Not very long.

COMMISSIONER: Mr Diehm, you will be quite a while in re-examination, I presume?

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MR DIEHM: Yes, hard to say, Commissioner. It will depend on how things develop tomorrow, but half an hour to an hour.

COMMISSIONER: Yes.

MR DOUGLAS: Could I fill you in-----

COMMISSIONER: I didn't ask you.

MR BODDICE: On present estimates, less than half an hour.

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COMMISSIONER: Thanks very much.

MR DOUGLAS: It does sound like until the end of tomorrow, doesn't it?

COMMISSIONER: Certainly.

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MR DOUGLAS: Dr Allsop is the gentleman on the telephone, at the moment has been arranged to give evidence at 11 o'clock on Thursday, tomorrow being Wednesday. I understand that he may not be a long time and it is not a greatly disparate time zone, so we may be able, Commissioner, to put him back, but I say that without consulting Mr Andrews.

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COMMISSIONER: At the moment, I won't start early tomorrow but we will see how we go. We might sit late.

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MR DOUGLAS: As long as the witness is not too tired, of course.

COMMISSIONER: Yes, I understand. We will ask him about how concerned he is about his level of tiredness.

MR MULLINS: Can I raise a matter about submissions?

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COMMISSIONER: Yes.

MR MULLINS: It seems that if the Commission follows its course, we will finish the evidence about Tuesday or Wednesday.

COMMISSIONER: Yes.

MR MULLINS: I know the original plan was we would have seven days from the conclusion of the evidence, which were your recent directions, which indicated submissions by the 21st. I know at least one other counsel at the Bar table would be out of town on the Thursday and the Friday of next week at a conference in North Queensland which might make it difficult to tie up the loose ends following Mr Leck. My request is that we be given the seven days from the conclusion of the evidence.

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COMMISSIONER: Well, I will certainly give you seven days if, in fact, it appears by next Tuesday that you need it.

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MR MULLINS: Thank you.

COMMISSIONER: So you have my assurance of that. For the moment, why don't we leave it everyone has to put in submissions by Friday next week and if necessary we can change that. I am not going to hold anyone to that if they have some reasonable basis for saying they need a little longer.

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MR MULLINS: Thank you.

COMMISSIONER: By that I mean a couple of days.

MR MULLINS: Thank you.

COMMISSIONER: All right. We will now adjourn

THE COMMISSION ADJOURNED AT 4.33 TILL 10.00 A.M. THE FOLLOWING DAY

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