



## 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 18/10/2005

..DAY 26

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THE COMMISSION RESUMED AT 8.58 A.M.

PETER NICKLIN LECK, CONTINUING EXAMINATION-IN-CHIEF:

MR ANDREWS: Good morning, Commissioner. Yesterday afternoon I omitted to tender a document about which Mr Leck spoke. I tender it now. It's of three pages. The first page is the e-mail from Karen Smith to the Executive and Nurse Unit Managers dated the 13th of January 2005. The third page is the e-mail from Peter Leck to Linda Mulligan dated 13 January 2005.

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COMMISSIONER: I will probably have this number wrong but 471 I think.

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ADMITTED AND MARKED "EXHIBIT 471"

MR ANDREWS: Mr Leck, I now propose for the next few minutes to explore the issue of under funding and how it affected staffing at the hospital, in particular by looking at the year 2002. Am I correct in thinking that inadequacy of budgets was a constant problem for you as a District Manager?-- Yes, it was.

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And did that mean that you were continuously hearing complaints from managers and directors of departments that they wanted more staff?-- That happened on a regular basis.

And did it continuously mean that for you as a District Manager, you had to disappoint them?-- Yes.

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Would that have had a demoralising effect on you?-- It did from time to time, yes.

Would that have meant that the relationship that you would want to maintain with your clinical managers and directors couldn't be as good as you'd have liked?-- Yes, I think that's a fair statement.

And that wouldn't have affected just the Bundaberg Health District; would that be the situation with all District Managers who were constrained by their inadequate budgets?-- From the conversations I had with them, yes, I think that's likely.

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Now, where you have a demand for further staff to fill clinical positions and an inadequate budget to meet those demands, did it mean that from time to time staff were forced to work unsatisfactorily long hours?-- Yes, there were staff

in that position.

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And you'd have been faced with that complaint regularly?-- It happened - yeah, it happened on a regular - I don't know that the complaints were brought to me regularly but I was aware that this was an issue and it was brought to me from time to time.

Now, as a District Manager hearing of this issue from time to time, would you immediately relay it to your line manager, the zonal manager, or was it something you knew could not be addressed and so you wouldn't trouble your zonal manager with it?-- There had been discussions with the zonal manager but there was - it was very clear that there was just no more money in the system and nothing could be done.

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COMMISSIONER: With these historical budgets, just leaving aside elective surgery for the moment, your budget for year 2 was based on your budget for year 1?-- Yes.

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Plus or minus?-- Yes, usually perhaps plus - if there was a wage increase, we would get an adjustment for wage increases and at that time there were occasions when we'd get budget reductions for productivity purposes as it was called.

Yes. Well, that's what I was going to ask you. Was there a standard productivity reduction each year on the basis that greater efficiencies would result in a reduced budget?-- Yes, there was. That did stop but I'm not quite sure when it was, that it ceased.

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But can you roughly estimate how long it continued, this cutting your budgets for productivity?-- Several years.

From when until when?-- Oh, well, it was happening when I was in Mount Isa and it certainly happened when I was in Bundaberg.

I'm more concerned with Bundaberg. Did it cease before you left?-- Yes, it had ceased before I left.

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How long before then?-- I think maybe a couple of years but I'm not exactly sure.

I see. What, was there a standard percentage reduction each year for efficiency?-- Yes.

And what was it?-- Oh, when you say standard, I think it varied a bit. It was somewhere between one and two per cent of your non-labour budget as I recall.

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Thank you. And the labour budget just depended on wage increases?-- Yes.

Yes.

MR ANDREWS: You'd have been confronted with, as a part of the complaint about understaffing, complaints about over work by

individual clinicians; that is, that they had to work too many on-call hours?-- There had been some complaints about that, yes.

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Well, when you say some, the inquiry has heard from a Dr Nankivell and I think his evidence may have even gone so far as to speak of hospitalisation for him for what he attributed to over work?-- I don't recall that but I do recall that he'd raised concerns about his workload on more than one occasion.

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Dr Baker was concerned as well about his workload?-- Yes.

Dr Carter, the director of the ICU, was concerned about the workload of the anaesthetists?-- Yes.

And these complaints about workload, were they complaints about which you could do nothing?-- Well, we couldn't get additional funding. What we were trying to do was to see what efficiencies we could make in the hospital to be able to reallocate funds. I talked yesterday about the efficiencies in operational services. So some of those things allowed us to internally increase the number of junior medical staff over a period of time and we also increased an anaesthetist's position for similar reasons in the last couple of years.

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Speaking about anaesthetists and understaffing, I will take you to 2002. In about Easter of that year do you recall that there was a senior anaesthetist at the hospital Dr Jelliffe?-- Yes.

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And he was the or was to be the only senior anaesthetist on duty for an eight-day Easter period in 2002?-- I don't recall the specifics of that.

Do you remember that he decided to cancel all elective surgery for a period of a number of days, about eight days?-- I know - I have heard that this evidence has been given but I don't recall that situation, no.

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That would, at the time, have been a matter of concern to you if it had happened?-- As I said yesterday, yes, it would be a concern but understandable if there were - weren't the anaesthetists there because somebody was on leave.

Do you remember asking Mr Jelliffe or asking that Mr Jelliffe be called to your office?-- No, I don't.

Do you remember meeting him in your office?-- No, I don't.

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It would be unusual for you to call to your office a senior medical officer in anaesthetics?-- Yes, it would.

Mr Jelliffe recalls that the first words spoken between the two of you in the meeting were by you to ask, "Just remind me of your current visa status"?-- I have got no recollection of that.

If you had asked such a thing, do you agree that it would have been for the purpose of putting some pressure on Mr Jelliffe?-- No, I don't agree with that. That is not something that I would do.

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How often do you recall - I beg your pardon. The visa status of your employees would be something revealed in their personnel files as a rule, wouldn't it?-- Yes, it would.

How often would you have called an employee to your office to ask about the currency of his or her visa status?-- It would be very rare. I have got no recollection of doing that.

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The-----

COMMISSIONER: Can you think of any reason for doing that?-- The only reason I would be concerned about someone's visa status is if they were running out and particularly if we were short of anaesthetists and, you know, I was concerned that we would also lose an anaesthetist because they didn't have the visa, but that's the only thing that I could think of.

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Mmm-hmm.

MR ANDREWS: Well, another hypothetical alternative is that as an employee reliant upon the patronage or support of your hospital to retain a visa, the manager, that's you, was in a position to pressure that employee to refrain from complaining?-- It's just not something I would do, particularly in an environment where you've got few anaesthetists. I have just got no recollection of that.

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Well, you - because of the budget inadequacy, you were forced to condone unsatisfactory working conditions for your clinicians, weren't you?-- There were staff I was thinking - that I thought were working too many hours, yes.

Now, you were forced to condone that because you had very little practical alternative?-- Yes.

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What I'm suggesting to you is that you were forced due to your budget inadequacies to put pressure on your overseas trained doctors, that is, those who were dependent upon satisfying their employer's needs at Bundaberg to be able to remain in Australia?-- No, I don't accept that.

Do you accept that it is a feature of overseas trained doctors who are here in Queensland on a visa and, in particular, who are filling an Area of Need position for a year, that they are vulnerable to pressure from their employer in a way that Queensland doctors are not?-- That's not normally a view I would consider but I can understand what you're saying, yes.

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Within 2002 you were attending Medical Staff Advisory Committee meetings?-- Yes.

Would you look at some minutes from some meetings of that committee within that year. I'll begin by putting up some

minutes of a meeting of the 10th of September 2002. Do you see that that's a Medical Staff Advisory Committee Meeting minute?-- Yes.

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For a meeting at which you were present, and the date, which is obscured, was the 10th of September 2002?-- Yes.

That document is part of an exhibit already, Exhibit 415. Would you look, please, at the next flagged page. "Matters on Notice", the issue is to do with the Acting Director of Surgery. That was Dr Sam Baker at the time, wasn't it?-- Yes.

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Now, Dr Baker informed the meeting that he had resigned on 30 August 2002. He said he did not wish to continue to be told to provide a Third World surgical service by the hospital management. He expressed an opinion that, "Queensland Health management had no interest in providing a quality surgical service in the Bundaberg Health Service District." Now, you'd have remembered that sort of inflammatory statement, wouldn't you?-- Yes.

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Dr Baker's complaints aren't articulated in that statement so as to reveal what he had in mind but would it have been having to work too long on-call?-- He did have concerns about that, yes.

Concerns about equipment?-- Yes.

Were they concerns you were financially able to do anything about?-- In relation to the call situation, no, we weren't able to do anything about that. He was after a Harmonic Scalpel as I recall. We had no immediate access to funds but we - well, there was a system of being able to apply for equipment funds each year and we put that on our priority list to submit to Corporate Office.

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Were you in a financial position to try to urge Dr Baker to remain in the district, for instance to attend as a VMO?-- We didn't have any additional resources for that but I didn't want to see Dr Baker leave.

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Now, had you the financial capacity to do so, what would you have been obliged to do to keep him in the area, if money were no object?-- He - as I recall, he made a request in relation to certain things that he wanted and Lyn Hawken drafted a letter which I signed, which was a response to him in terms of what we were trying to do to assist him. But we didn't have - the reality is that we didn't have the financial resources to do everything that he wanted done.

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Did you make a request up the line or was this an occasion where you knew it would have no positive result?-- I remember having a discussion with the zone in relation to it. There were some query about whether a Harmonic Scalpel was really needed in Bundaberg for example. I can recall that. But it was a time when we were getting a very clear message that there was just no funding available.

Now, the discussion with the zone, that would mean with Mr Bergin, your zonal manager?-- Yes, I think it was him but I can't be sure.

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COMMISSIONER: And you and he were discussing whether the Harmonic Scalpel was warranted at Bundaberg?-- Yes, I think it was Mr Bergin.

Neither of you were qualified to express an opinion on that though, were you?-- No, I personally wasn't but I'd raised it with him as a - as an issue that Dr Baker had said that he wanted.

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Well, nor was he to your knowledge, was he?-- No. He made a comment along the lines that the Gold Coast Hospital had had a Harmonic Scalpel and it wasn't used that frequently.

MR ANDREWS: Is there any flagged page on - in that bundle of minutes? This seems to be a minute of a different meeting. Is it identified? You will see that this is a minute of a meeting attended by you and dated one sees in the right-hand side the 8th of October 2002 and you raised something relating to the budget: "Mr P Leck reported that the blowout in worker's compensation charges had adversely affected the operating budget of the hospital. The other issue of concern was that elective surgical targets were falling below benchmark"?-- Yes.

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Now, how does one raise the elective surgical targets back to the benchmark by making staff work longer or more efficiently?-- Yes, there were some issues in terms of whether our theatre was operating as efficiently as it could but at that stage I didn't expect that we would actually meet our elective surgery target.

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COMMISSIONER: What was the question about whether the theatre was working as efficiently as it could?-- There had been an issue with theatre utilisation and the utilisation rate in the theatre had been somewhere between 60 and 65 per cent, meaning that 35 to 40 per cent of the time the theatre was staffed but there was no surgery going on.

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But that's because you didn't have the surgeons, isn't it?-- Well, that was partly the reason but there are things that you can look at like, you know, is surgery starting on time, are patients arriving when they're scheduled to or are they waiting for patients to be delivered from the ward, those sorts of things.

MR ANDREWS: In 2002 there were self-assessment documents sent to different departments for completion. Do you recall that?-- I don't recall that. It was probably with respect to accreditation I would think, if it's a self-assessment document, but I'm guessing.

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Yes, to do with - when you say accreditation, was that the Australian Council of Health Care Standards accreditation?-- Yes.

And do you recall that there were some assessment documents completed by, for instance, Sam Baker as at the time Director of Surgery, by Dr Carter as at the time the Director of Anaesthetics?-- I don't recall the specific documents, no. 1

I have a self-assessment document from Exhibit 410 being annexure SPB13 to Dr Baker's statement and it's a self-assessment mandatory criteria document for the Department of Anaesthetics. According to Dr Baker's statement, it was a document compiled by Dr Carter?-- Right. 10

And on its very last page, I'll put it on screen, it raises a particular equipment issue, that there were insufficient sharps containers in the operating theatre, scalpel blades could be more safely removed from handles, and you will see at the bottom of the page the same issues, "More sharps containers; Quicksmart scalpel blade removers more widely available." Now, I don't suppose you remember that particular issue?-- No, I don't. 20

You did, in an e-mail of the 27th of September 2002 to Dr Nydam and Nurse Raven, refer to precisely those issues when discussing the subject of self-assessment mandatory criteria. You suggested, "There appear to be some issues in the document that should be able to be easily fixed (eg scalpel blade removers, sharps containers)"?-- Right. 30

Now, earlier in the day Nurse Raven had e-mailed you, you will see at 10.42, and she'd been talking about a document completed by Sam Baker and another one by Martin Carter and it seems that she regarded the one by - well, that's the anaesthetics document, presumably the one by Martin Carter, as rather scathing. Do you have any recollection of one being more scathing than the other?-- No, I don't actually recall the documents. 40

Well, the response to Ms Raven's e-mail, which we see on screen, suggests that you must have perused the document that discussed the scalpel blade removers and sharps containers?-- Yes. 50

Now, I have it here. It does appear to contain a number of scathing comments by Dr Carter. I won't put each of them up on screen unless you'd like me to but it seems to be broken into approximately three groups of complaints or recommendations. Consistently, there is a complaint about staffing levels. That comes as no surprise to you?-- No.

Consistently, there is a complaint that the staff levels are resulting in fatigue for staff. Does that come as any surprise to you?-- No. 60

And thirdly, there are some strategic recommendations. I will come to those later but when it comes to the complaints about fatigue, you'd have known as a District Manager, even without clinical background, that that raised an issue of patient safety?-- Yes, it can do.



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And that was a matter about which you had some duty to concern yourself?-- I was concerned by the complaints about fatigue, yes.

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What were your alternatives for fixing the fatigue problem, the practical and the impractical ones? Would it be fair to say you had no alternative; either allowed the doctors to work fatigued or you cut back the service?-- Yes, I think that's - that's correct, that when - if we're talking about the anaesthetists specifically, there were a limited number and there had to be an on-call roster and we didn't have the funds to - at that time, at least, to enhance it, although we later did.

COMMISSIONER: It wasn't just the anaesthetists; it was the surgeons, too, wasn't it?-- Yes.

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MR ANDREWS: Now, the difficulties with cutting back the service, as I understand it it would have meant you would have to transfer patients to another facility?-- Yes, it would have meant that.

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Would that have been an expense that the hospital would have to bear, or would that be a budget neutral item?-- Oh, the - the - well, I'm - if they were transferred from within the hospital via ambulance, it would be budget neutral. It would have an impact, presumably, on the patient travel budget if it was saying to somebody, "Don't come into hospital, go directly to hospital X."

So that I understand that a little better, can you let me see if I can phrase it? Do you mean that if there was a patient who communicated with the hospital indicating that he or she had a complaint that they wanted treated, if you referred them, for instance, from their home to another facility-----?-- Yes.

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-----that would have a negative impact on your budget?-- It would cost us a patient - yes, it would cost us the fee of their car travel or bus travel or rail travel or whatever.

COMMISSIONER: But if they came into your hospital and you transferred them, it would cost you nothing?-- By ambulance, yes.

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Why didn't you do that when you were operating a hospital where there is fatigue on surgeons and anaesthetists were rendering their service unsafe?-- I didn't feel that there were any other hospitals that were in a different situation from us. I think everyone was under strain and the bed situation across - across the State was such that I don't think other hospitals would have been in a position to have been able to take those patients in any event.

You could have transferred them to Brisbane?-- Yes, they could have been. But, again, the bed situation in Brisbane is usually tighter than it is in the country.

Well, you had a problem, didn't you, of either offering an unsafe service or none at all. Isn't that correct?-- I - I didn't see it in terms that were that black and white but I was concerned about fatigue and the impact that that might have. What we particularly concentrated on was junior staff rosters, because there was concern specially around junior staff and fatigue for junior staff. So there was work done on rosters for them. As I said, we'd managed to make some savings so that we could increase the number of junior medical staff also.

But you had the same problem with senior staff?-- Yeah.

The anaesthetists and the senior surgeons?-- Yes.

All right.

MR ANDREWS: Among the complaints about fatigue that Dr Carter raised, said "problems of fatigue are ignored". Now, was that an accurate complaint by him?-- When it was raised with me it wasn't ignored but there wasn't much I could do about it. Most of the contact that I recall was through the Director of Medical Services, which you would have expected.

He complained, "Management is aware of Australian college standards and knows them. Rosters do not approach recommendations with regard to fatigue. Appropriate staffing is in order." I think by that he must have meant "would be in order". Is he correct that management was aware that the staffing levels were not in accordance with Australian college standards?-- There had been some discussion at a corporate level about the anaesthetic - I thought they were recommendations rather than standards but I might be wrong there.

Well, recommendations?-- And there was a view that Queensland Health would not simply adopt those recommendations as something that it would - that it accepted within the State.

Whose view was that?-- I don't know whose view but I had heard it said at a meeting.

Well, did you have a direction from above that you could ignore the recommendations of Australian colleges?-- There wasn't a direction as such, no.

Did you regard it as something that was universally ignored in Queensland Health?-- Yes.

COMMISSIONER: Did you think that was a good thing, that it should be ignored?-- I didn't have an opinion on something at that level. I was concerned about the anaesthetists in Bundaberg and I met with Martin Carter on a few occasions and we eventually managed to nut out a way to be able to increase the staffing levels there.

MR ANDREWS: Dr Carter writes: "Management continues to

ignore safe hours practices and the fact that the anaesthetic department is grossly understaffed." Now, was he correct that the department was, in September 2002, in any event, grossly understaffed?-- They are not the words that I would have used. I'd - I just can't remember whether there were any vacancies at that time but the number of positions of anaesthetists hadn't changed for some - for some years, or certainly since from before I was there.

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COMMISSIONER: Well, you agree it was understaffed, you just don't agree it was grossly understaffed; is that what you are saying?-- Yes.

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But he would know more about the correct staffing levels for anaesthetists than you, wouldn't he? To ensure patient safety?-- If he felt it was a patient safety issue, yes. I don't remember him specifically talking about it in that context.

What other context was there?-- That he was tired and doing too much on call.

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That's the same context, isn't it? If anaesthetists are tired and doing too much work and getting fatigued, patient safety is at risk. It is the same question. It is just two aspects to the same question, isn't it?-- That's a fair summary, yeah.

MR ANDREWS: Dr Carter's mandatory criteria document did have some strategic recommendations. One of them was - it is hard to sort out the criticisms from the recommendations, but one of them is, "There is little direction from management with regards to strategic direction. They refuse to clearly define the hospital's operational role in delivery of services and the critical mass of medical staff required to meet this role. They appear more interested in making targets than delivery of quality health care. The department of surgery's operational role needs to be clearly defined with reference to the budget provided. Staffing levels need to be set in order to maintain services. There needs to be an operational plan for the continual development of surgical services in the Bundaberg Health Services District." Now, is that an unfamiliar criticism or is it something you understood to have been a clinician's criticism of the Bundaberg surgical department?-- I have some recollection of that but not the detail of it.

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Now, the suggestion seems to be that you need - I beg your pardon, "Management needed to clearly define the staff levels that were required for a department."?-- Those staff levels were clearly defined in terms of the budget. The issue was, from Dr Carter's perspective, about increasing those numbers of staff to meet the demand that was happening, and also future demand.

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MR FREEBURN: Can I - before you proceed, can I just clarify - there is two documents hand written, one by Dr Baker and one by Dr Carter. As we understand it, the one by Dr Carter is written in capitals - handwritten in capitals. The one by

Dr Baker is handwritten in lower case running writing. I think these questions have confused the two of them. What's being put to the witness is that these are criticisms of Dr Carter and, in fact, they are criticisms of Dr Baker. It may not matter because the witness doesn't recall either document.

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COMMISSIONER: I don't see how it matters but I think you might be right about that.

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MR ANDREWS: I sit corrected. Commissioner, it does seem that the document with which I am briefed has a blank page which could indeed be intended to separate two documents.

COMMISSIONER: I think that's right. But, as Mr Freeburn has said, it doesn't matter.

MR ANDREWS: You have said that staff levels were set by the budget. Do you mean were limited by the amount you could spend?-- Yes, but there was - there had been, for many years, a staff profile. So the budget - as part of the preparation of the budget you had the numbers of full-time equivalent staff, as it was called, allocated to each unit and your budget in relation to staffing was based on that, and then you had a non-labour component.

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And that staff profile, how recently was it changed, or was it - yes, how recently was it altered to take into account population changes in the Bundaberg Health District?-- I don't know. It hadn't been altered other than those occasions when we would receive enhancement funding for a new service.

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COMMISSIONER: But it has never been changed to reflect the change in population base in Bundaberg?-- Well, not while I was there.

Not while you were there, no.

MR ANDREWS: The expression "set up to fail", would it be fair to say that you were given a fixed budget that was such that whatever your efforts, you were set up to fail in the delivery of health services at Bundaberg?-- It feels like that. It felt like that at times.

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Another strategy item - this one's not in upper case, so I assume it is written by Dr Baker as opposed to Dr Carter - is "surgical skill mix is not even considered in recruitment or encouraged. There is very little support from management or HR for locum finding for holiday conference relief." Now, firstly, is that an accurate assessment by Dr Baker? Let's take it one at a time. "Surgical skill mix is not even considered in recruitment or encouraged."?-- No, I don't think that's right but the recruitment was the responsibility of the Director of Medical Services. But they would usually look to see, for example, if whoever was being employed performed scopes, for example.

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Wouldn't it be fair to say that by the end of 2002 when you

were recruiting two overseas-trained doctors for the department of surgery, that as an employer you had very limited options? You had to take pretty much whatever a recruitment company could supply?-- Yes, I think that's a fair statement.

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That would have given you very little scope for considering a skills mix in the surgical department. Do you agree?-- Yes.

On the same page Dr Baker writes: "Management shows no interest in alternative skill mix models." Now, would it be fair to say that management had no way of influencing the skill mix models because it was obliged to take what surgeons it could get?-- I think that's right. But I do recall at the time Sam was particularly interested in trying to develop a service that offered more major bowel surgery because I believe he had an interest in this and I think that's what the harmonic scalpel issue was about.

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Now, he writes - and I paraphrase - "management shows no interest in alternative skill mix models of staff recruitment for the future in view of changing models of surgical training." Now, are you able to say what he meant by that?-- I can only assume what he meant, and, again, from the discussions at the time, he was very determined about his harmonic scalpel to enable him to do more complex bowel and gut surgery.

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But he was talking about models of surgical training?-- Yes. So he felt that the - you know, the hospitals that he had been working in provided equipment like that which enabled more complex surgery and he thought it should be available in Bundaberg.

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Would he not have been talking about restoring the department of surgery at the Bundaberg Hospital to the position it had been in a few years earlier where it was a training department?-- I don't specifically recall that in discussions with him.

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Mr Leck, Dr Patel was particularly productive in striking the elective surgery target, wasn't he?-- In the time that Dr Patel was there, yes, we did meet the elective surgery targets.

And when you spoke on the 17th of December 2004 with the Audit and Operational Review Branch with officer McMahon - I think it was Rebecca McMahon, as I recall-----?-- Yes.

-----you did tell her that the district needed to handle that investigation carefully as Dr Patel was of great benefit to the district and you would hate to lose his services as a result of the complaint?-- Yes.

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COMMISSIONER: Were you talking about his capacity to meet those elective surgery budgets?-- Yeah, I think that was part of it. I think - basically what happened is - was that Darren Keating was emphasising that he did not believe that there

were - there were problems with clinical management and that this process simply by happening would result in Dr Patel leaving and that if Dr Patel left-----

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What process would cause-----?-- An investigation. He would simply leave because an investigation was going to be conducted.

Mmm?-- And - and that if that happened we would quickly lose Jim Gaffield, the other general surgeon and we would have no service.

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Did he explain why he thought that if an investigation started Dr Patel would leave?-- Why? Because he - he didn't need to stay. I mean, I guess there was-----

Are you speculating or are you saying that Dr Keating did explain this?-- I can't recall Darren's specific words.

Because an obvious explanation is that Dr Patel would have been so concerned about the result that he would leave before it came?-- Yeah - yes, I understand where you are coming from but that wasn't the thought at that time.

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It wasn't your thought?-- No.

You don't know whether it was Dr Keating's or not?-- No.

MR ANDREWS: When dealing with the history of matters that were brought to your attention relating to Dr Patel, you note in your statement at paragraph 27 that a document entitled "Peritoneal Dialysis Catheter Placements - 2003", listing six patients who had undergone catheter placement and had developed complications, appeared on your desk some time between January and June of 2004. You still don't know who put it there?-- No, I have got no idea who put it there.

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It would have to be somebody with access to your office?-- Yes.

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Was yours an open door office so that anyone could walk in there?-- My door was often - I didn't close it if I was out of the room. So people could walk through. There was also a back set of stairs and that door was open as well. So somebody could come up the back stairs and drop it in.

There are, within the evidence before the inquiry, two documents which deal with peritoneal catheter placements. One is headed, as you describe in paragraph 27, "Peritoneal Dialysis Catheter Placements - 2003"?-- Mmm.

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And I will put this one up on the screen, which is exhibit 18. Do you see the heading "Peritoneal Dialysis Catheter Placements - 2003"?-- Yes.

Now, I am assuming that when you gave instructions to your solicitors for the compilation of your statement, that you were not simply relying on your recollection, but perhaps you

were prompted by a document that was then in your possession?-- Yes.

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The document that was then in your possession, do you know whether it is the one that you retained from some time in January to June 2004, or something that was collected later?-- I don't know.

You say that Dr Patel was listed in the document as the surgeon in relation to each of the cases mentioned. And I see that this document is consistent with that description in the surgeon column, one has Patel in six places out of six?-- Yes. I am no longer - I know there are two documents and I am not sure which one I saw.

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Right.

COMMISSIONER: Does this look like the one you saw?-- My only recollection is that there were half a dozen patients and the focus was the fact that there had been complications. I can't really recall anything other than that.

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MR ANDREWS: Surely you recall that two of them died?-- Yes.

That would have been the sort of thing, as a district manager, that would have interested you immediately?-- Yes, I took the document to Dr Keating.

Did you take it to Dr Patel, by any chance?-- No.

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COMMISSIONER: The way this document reads, it rather appears as if these were the catheter placements in 2003; in other words, that it was a score of six out of six. Is that the way the document - is that the way you read the document which came to you?-- No, I didn't know how many catheter placements there had been done in the hospital. I was concerned that there were some complications, that this document had appeared. I took it to Dr Keating. He indicated that he was aware of it, that comorbidities - renal patients are often sick, they have comorbidities, and words to the effect that he wasn't concerned.

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COMMISSIONER: Did you accept that? It looks very odd, doesn't it?-- I accepted it.

In retrospect now, it looks odd, doesn't it?-- In the circumstances, yes.

MR ANDREWS: Would you look, please, at this copy of exhibit 69? You will see that it, similarly to the last one, although not identically, identifies two patients as having died. It identifies, again, the six patients, but in the surgeon column Dr Patel's name appears only once?-- Mmm.

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To any reader, perhaps the most significant difference is that there's only one surgeon's name appearing in the column of - for six surgeon places?-- Mmm.

Now, when you provided your statement at paragraph 27, you said that Dr Patel was listed as the surgeon in relation to each of the six cases, and we see from this document that he's listed in relation to only one. Do you remember that whatever document was shown to you - or that you found in 2004 - do you remember forming the conclusion that it was in relation to six patients who were patients of Dr Patel?-- I don't recall that, no. As I said, the focus for me - the document had arrived and there were some complications on it. I now can't be sure whether Dr Patel was listed for each one or not.

COMMISSIONER: I thought you said earlier that you thought he was?-- I've said that in my statement, and we obviously had one document when I was preparing that, but I just can't be sure. I just don't know. I can't be sure.

MR ANDREWS: You say in your statement you were concerned by the contents of the document as some of the patients had died?-- Mmm.

Presumably from their complications?-- That was my concern, yes.

Well, when Dr Keating discussed things with you, you say he didn't think it was a cause for concern. Did he say that he'd investigate it, or that he had investigated it?-- I don't recall his words, but the impression was that he had looked into it because he said, yes, he was aware of it, and I formed the impression that he had looked into it, but I don't know the exact wording.

COMMISSIONER: And that was enough for you?-- Yes, it was.

You didn't think you should take it further?-- No, I relied on my Med Super and my Director of Medical Services.

MR ANDREWS: You wouldn't have relied on him, would you, unless he'd told you or indicated to you that he had investigated it?-- As I said, the impression that I had was that he had looked into it, but I don't know what that means. He just appeared to not be concerned about it, and that relieved me and I felt that I didn't need to be concerned.

COMMISSIONER: Your impression was that he was happy with it and therefore you were happy with it?-- Yes.

And that was all?-- Yes.

MR ANDREWS: Do you remember in 2004 the situation arose that catheter placements for renal dialysis patients stopped being performed in your hospital and started being performed in a private hospital?-- Yes.



Did you ask for an explanation why?-- Darren discussed it with me. He indicated that a Western Australian firm had offered to do it, that it would enable one surgeon to be doing it - I mean, I assumed there was more than one surgeon conducting catheter placements - and it would provide - or free up theatre time for us to do more elective surgery.

1

The fact that he mentioned one surgeon would be doing it, was that a matter of significance, because that was a safety feature?-- I didn't see it in terms of a safety feature at that point, although usually the more procedures an individual does, the more-----

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Proficient they become?-- -----proficient they become, yes.

When you saw the catheter placement audit, did you discuss with Dr Keating who the surgeons were?-- No, I don't recall discussing that.

It would have been an appropriate matter to discuss, wouldn't it? Wouldn't it have been appropriate to suggest that, perhaps, all the surgery be given to the most proficient of the surgeons in the hospital?-- That wasn't something that we discussed.

20

But it would have been an appropriate topic, wouldn't it?-- That's not - that's just not something that came to mind in relation to this. As I said before, I was relieved. I had checked with Darren, he wasn't concerned, and I no longer have any concerns.

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COMMISSIONER: You left all these matters to Dr Keating?-- Yes.

And once he said that he was satisfied, you didn't inquire any further?-- No.

MR ANDREWS: Well, subsequent evidence has suggested that there were six complications out of six patients because Dr Patel was incompetent at performing this procedure. If Dr Keating had discovered such a thing, would it have been appropriate for him to have reported it to you or to have kept it to himself?-- I would have expected he would have advised me, yes.

40

COMMISSIONER: Or done something about it for the future. If he had just moved the surgery on to another hospital with another doctor, you would have been happy if he hadn't told you?-- I wouldn't have been happy if he hadn't told me. I would have expected that I would be told.

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MR ANDREWS: Before receipt of this document somewhere between January and June of 2004, you'd had other issues with respect to Dr Patel brought to your attention-----?-- Yes.

-----with respect to clinical matters and clinically poor outcomes. Do you remember prior instances brought to your attention?-- No.

Do you remember writing a letter in respect of - or a letter to a Mrs Webb in respect of Dr Patel's cutting of her carotid artery?-----

MR DIEHM: Commissioner, I object to this. The evidence, I would have thought, in this Commission had established that that patient was not operated on by Dr Patel.

MR ANDREWS: I'm prepared to accept from all the shaking heads in the room that I must be mistaken about that topic. Please ignore that last question, Mr Leck. Do you remember, Mr Leck, the presentation to you by Nurse Unit Manager Hoffman in October of her concerns with respect to Dr Patel?-- Yes. I don't remember it in detail, but I remember it, yes.

Now, you remember, among other things, she alerted you that Dr Miach had chosen to send his patients or to keep his patients from Dr Patel?-- Yes.

That would have been quite unusual in your history as a District Manager to hear that a physician in your hospital would not entrust his patients to a surgeon in your hospital?-- Yes.

Why didn't you see Dr Miach about that issue?-- I didn't feel it was - I mean, I took this matter seriously and I didn't feel that an internal investigation is what should happen. I felt that it needed to be done externally.

Wouldn't it have been a matter concerning patient safety?-- Well, it was a matter concerning patient safety, and I felt that it needed to be investigated.

But you did do some internal investigations. You interviewed Dr David Risson, a PHO?-- Darren was-----

Isn't that correct?-- Yes, I did, yes.

And you interviewed Dr Dieter Berens-----?-- Yes.

-----an anaesthetist?-- Yes.

And you interviewed Dr Martin Strahan?-- Yes.

And Dr Strahan, is he a physician?-- Yes, he is.

Why did you not interview the physician that you heard was keeping his patients from your surgeon?-- I had asked Darren to arrange some meetings with some of the doctors that were mentioned in Toni Hoffman's correspondence. My view was that Darren was reluctant to have the matter investigated because he felt that it was all personality-based conflict, and I felt that we needed - he needed and I needed some advice from some doctors to see if there was any corroboration of what was being said - so, to see whether or not there was something to it - and I - aside from me, I wanted him to hear that from the doctors as well, but I left him to arrange who it was we met

with.

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COMMISSIONER: That doesn't quite answer the question. You say - knowing that Dr Miach wouldn't let his patients near Dr Patel, why didn't you say, "I would also like to speak to Dr Miach.", or why didn't you speak to Dr Miach?-- I just didn't think of doing that.

You were concerned not only that there might be some substance in the complaints, but that they might be very serious?-- Yes.

10

That it might involve serious malpractice by Dr Patel?-- Yes.

If you were so concerned, weren't you concerned about Dr Patel continuing to operate on patients whilst you were arranging for the investigation to take place?-- As I said yesterday, I had - it crossed my mind as to whether or not he should be suspended, but Darren was quite adamant that it was - the complaint was personality driven, and I accepted that - well, accepted it to the point of not feeling it was necessary to suspend Dr Patel.

20

I just come back to Dr Miach. Dr Keating wasn't suggesting that Dr Miach's reluctance to let Dr Patel near his patients was personality driven, did he?-- He didn't state either way.

Well, then, why didn't you speak to Dr Miach?-- I didn't feel it was necessary to speak to everyone that was mentioned and I had just asked Darren to arrange for some of the doctors to speak with us.

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You were concerned that there might be serious malpractice. You have just agreed with that?-- Yes.

Weren't you concerned to get to the bottom of it as soon as you possibly can in order to see whether Dr Patel should be permitted to continue to operate?-- I did want to get to the bottom of it as soon as I could, yes.

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Well, then, why not speak to Dr Miach?-- Because I just didn't think of doing that.

All right.

MR ANDREWS: Let me put on the monitor one of the versions in the evidence of Ms Hoffman's letter to you of 22 October. Now, to begin with, it is a letter of 22 October to you. That's very unusual, isn't it? It means that Ms Hoffman has gone past her line manager, directly to someone above that level?-- She'd met with me first, but, yes.

50

But it is orthodox in the Queensland Health hierarchy for a person with an issue to take it first to his or her line manager and not to jump that level?-- She had - she had gone to the Director of Nursing and subsequently met with me, and I asked her to put it in writing.

Now, the first item that I block in green, I do because it all seems to relate to one patient or topic. Now, do you see it relates to Dr Patel's treatment of a person who had an oesophagectomy performed by him?-- Yes.

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And do you see that it implies that there is - implies a criticism of his clinical competence or - and, indeed, implies a concern about his judgment as to the procedures that should be undertaken at the hospital?-- Yes.

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The next item in orange relates to a different topic, and that's his behaviour. That would be a matter that relates to personality, threatening staff with his resignation. You are nodding-----?-- I'm just trying to find out where it is.

Dr Patel would threaten the staff with his resignation when it was suggested it was time to transfer out a ventilated patient?-- Yes.

That has to do with his personality. It also has to do with the scope of the hospital?-- Yes.

20

That sounded like Dr Patel, didn't it?-- Dr Patel was loud and somebody that, over time, I thought was somewhat egotistical.

COMMISSIONER: And overbearing in manner?-- I personally hadn't experienced that, but that was the essence of the complaint, yes.

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MR ANDREWS: He stated on occasions he would "go straight to Peter Leck", as he'd "made him half a million dollars this year". Now, that sounds like Dr Patel, too, doesn't it?-- It sounds - yes, it sounds like his approach - a bit egotistical, as I said.

Self-aggrandising?-- Yes.

But the next issue in blue concerns patient safety. You agree each time they had a ventilated patient that required inotropes, he would argue with the anaesthetists?-- Yes.

40

His choice didn't reflect best practice guidelines in Australia. You saw that?-- Yes.

Did you do anything about that pending the investigation?-- No.

Did you do anything about the issue of keeping ventilated patients too long in the ICU pending the investigation?-- No.

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The next issue seems to be personality, the fact that he denigrated the Nurse Unit Manager. Can we turn the page? The next item in green: high complication rate is suggested. "Several patients had wound dehiscence and several experienced perforations. This is a list of patients I believe require formal investigation. It is taken from our ICU statistics and they are not full and comprehensive, as there are no

statistics from the operating theatre or the surgical ward." Now, that's plainly telling you that there's an issue of clinical competence that's being raised by the writer?-- Yes.

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And then she goes on to identify, by my reckoning, another seven to 13 patient cases. I say "seven to 13", because she speaks of Dr Miach without listing any particular numbers of patients, but you'd have been aware that there was an issue to do with peritoneal dialysis catheter placements that had been raised some months before?-- I hadn't thought of that in the context of this letter.

10

All right. So, perhaps to you, as a reader, it raised as few as only about seven patient cases of concern to Nurse Hoffman?-- I don't - yes. I mean, I don't know the exact numbers, but, yes.

Well, this one - the first one in yellow here is a second oesophagectomy concern. That's another oesophagectomy patient?-- Yes.

20

Concerns about wound dehiscences. You would have understood that they raised issues of clinical competence?-- That could do, yes.

Well, three wound dehiscences with one patient. You would have understood that to be a clinical competence issue for investigation?-- That it could be. I wasn't totally familiar with what wound dehiscence was.

30

The next one is a third oesophagectomy patient, ventilated for 302 hours. You would have understood that that raised a scope of practice issue - that is, whether that was a patient who ought to have been treated in your hospital?-- Yes, being ventilated for that amount of time, yes.

And another patient ventilated for many days is the next item in blue. The next is an issue with transfer. Now, you understood that by this stage, by October, that there had been a significant transfer issue raised about Mr Bramich who had died in August?-- Yes, I was aware that there had been an issue with transfer, yes.

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Dr Miach refused to allow Dr Patel to care for his patients as he stated he had 100 per cent complication rate with peritoneal dialysis insertion. Did you discuss that with Dr Keating?-- I don't believe we went through all of the detail. I don't recall discussing that particular issue with Dr Keating.

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COMMISSIONER: It was an alarming issue, wasn't it? Were you alarmed when you read that?-- Yes, I was concerned.

Well, more than just concerned; very concerned, you would have been, wouldn't you?-- I was very concerned, yes.

So, what did you do about it?-- The first thing I did was to find out whether or not there was any data in our Adverse

Events Register to corroborate this material, so I had made contact with Leonie Raven and she hadn't provided much information that had - to raise concern.

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But you didn't make contact with Dr Miach. You told us that?-- No. We spoke to Drs Risson, Strahan and Berens, and-----

No, but we are talking about here 100 per cent complication rate with peritoneal dialysis insertion?-- Mmm.

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What did you do about that specifically?-- No, I didn't take any specific-----

It caused you a great deal of concern, you told me?-- The whole letter caused me concern.

That alone would have caused you a great deal of concern, just that item?-- It did cause me concern, but I didn't view it differently than in the context of the rest of the letter.

20

So, there's nothing specific you did with respect to that?-- No.

MR ANDREWS: Would you look, please, at the first of the notes of meeting that you held subsequently? Is this a note of your meeting on the 29th of October?-- Yes.

With Dr Dieter Berens in company with Dr Keating?-- Yes.

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Did Dr Berens say that with respect to the patients in the ICU, Dr Patel's critical care knowledge was not up to date in relation to choice of drugs and fluids, and the application of some physiology principles?-- I'm sorry, I didn't quite hear the question, but, yes, I'm reading it, and that's there.

That should have concerned you and would have at the time?-- It did concern me, yes.

Dr Berens remembered two cases related to his own concerns?-- Yes.

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He questioned Dr Patel's judgment to undertake some procedures - vascular procedures?-- Yes.

And Whipple's procedures?-- Yep.

Suggesting that he wasn't current. That means, his skills weren't up to date, doesn't it?-- Yes.

50

He said that Patel wasn't flexible and wouldn't discuss alternative clinical options?-- Yes.

He said that he was reluctant to admit his own mistake or error in the care of his patients?-- Yes.

He said he didn't appear to be completely accountable and honest about his surgical actions?-- Yes.

Do you agree that was a particularly damning description of the Director of Surgery?-- Yes.

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COMMISSIONER: It was alarming to hear that, wasn't it?-- Yes, I was alarmed and concerned.

MR ANDREWS: A few days later, did you have a meeting with Dr Risson, again accompanied by Dr Keating?-- Yes.

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Now, Dr Risson was just a PHO, unlike Dr Berens, but - so, why did you go to him rather than to Dr Miach?-- That was Darren's judgment.

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Would it be right that Dr Risson's opinion would be less likely to be persuasive than the opinion that you'd had from Dr Berens?-- Yes.

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COMMISSIONER: Or than any opinion that you would get from Dr Miach?-- I'm sorry?

I said, "Or than any opinion you would get from Dr Miach"?-- Yes, I think that would be right.

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MR ANDREWS: But Dr Risson, the PHO, was concerned about the transparency of the current surgical audit process conducted in the surgical department. Now, I'm trying to translate that into - out of its jargon. Does that mean he was concerned that there was not an effective process for judging the outcomes from the surgical department?-- Yes, I think they were Dr Risson's concerns.

And he had a concern about the apparent number of post-operative complications including infection from patients coming from the surgical department?-- Yes.

20

Were you and Dr Keating - well, were you getting more and more concerned by the 2nd of November or was it still a personality issue?-- I was - I was getting more concerned. I was - I was wanting to get an external investigation undertaken.

COMMISSIONER: Did it ever occur at any stage to consider suspending Dr Patel from further surgery?-- It had occurred to me but I relied on Darren's opinion.

30

When did it first occur to you?-- About the time that I received Toni Hoffman's letter.

MR ANDREWS: Would you please look at the notes of your meeting on the 5th of November 2004 with Dr Strahan. Again, you attended with Dr Keating?-- Yes.

Dr Strahan discussed a case relating to a particular female patient?-- Yes.

40

He said he believed the case showed Dr Patel was rigid in his thinking and judgment, unwilling to be flexible as new evidence came to hand?-- Yes.

Was it plain that he and Dr Patel had had a difference of opinion as to how to treat this patient?-- It appeared that they had, yes.

Now, the lady was sent home but returned for a Whipple's operation and died several days later. He questioned whether there should be Whipple's operations done in Bundaberg?-- Yes.

50

That's the last in a line of complaints or concerns raised by clinicians in the hospital about Dr Patel performing complex operations, operations too complex for your hospital and for him?-- Yes.



And Dr Strahan said Dr Patel appeared to operate without some form of peer review?-- Yes.

1

Now, does that mean that there were no other surgeons who were monitoring his behaviour?-- That's what it sounded like, yes.

COMMISSIONER: There had never been anyone monitoring his behaviour, had there?-- Not that I was aware of, no.

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MR ANDREWS: When you finished that interview did you feel better or worse than you had about your views of Dr Patel - well, I beg your pardon. Do you remember?-- I don't remember the differences between different interviews.

Well, that interview takes us up to the 5th of November.

MR FREEBURN: Commissioner, is that an appropriate time to have a break?

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COMMISSIONER: Yes, if you would like to have one now, certainly. Okay, we will break for 15 minutes.

THE COMMISSION ADJOURNED AT 10.34 A.M.

THE COMMISSION RESUMED AT 10.52 A.M.

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PETER NICKLIN LECK, CONTINUING EXAMINATION-IN-CHIEF:

MR ANDREWS: Mr Leck, I'd like to take you to March 2005 to the time when publicity in respect of issues at the hospital surfaced. Do you recall writing this e-mail copied to Mr Bergin. It's to SDLO re Jay Patel?-- Yes.

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What's "SDLO"?-- Liaison officer is the "LO". I'm not quite sure what the "SD" is.

That person, is that a public relations person?-- They're a liaison officer between the Minister's office and the Director-General's office.

It seems that your e-mail concerns a newspaper's information about allegations relating to Dr Patel?-- Yes.

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Do you agree? A letter that it seems the newspaper must have detailing the concerns?-- Yes.

Is it normal practice for you to alert also your zonal manager?-- Yes.

And who's Paul Michaels?-- He's the media officer for the zone.

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And you have to alert them to these things because adverse publicity is a matter of grave concern to Queensland Health?-- Yes, it is, and there would need to be some management thought as to how that was going to be managed.

I tender that e-mail.

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COMMISSIONER: That's Exhibit 472.

ADMITTED AND MARKED "EXHIBIT 472"

COMMISSIONER: Just before you leave that e-mail, the person who is the liaison officer between the Minister's office and the Director-General's office?-- Mmm.

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How did you come to be e-mailing that person? Was that a protocol or a practice?-- It was a practice, yes.

To do what? To e-mail the liaison person between the Minister's office and the Director-General's office in what circumstances?-- When there were adverse publicity issues about to happen.

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When there were - whenever there were?-- Yes. Maybe not every - no, I can't say that would be every occasion. But I viewed this seriously enough for that - that Paul Dall'Alba needed to be advised.

This was Paul Dall'Alba. Was this protocol in a document somewhere?-- Not that I'm aware of, no.

But you knew about it-----?-- Yes.

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-----obviously?-- I considered it to be an expectation.

Can you recall how that was conveyed to you?-- No.

All right.

MR ANDREWS: The next day on the 23rd of March you sent an e-mail again to Paul Dall'Alba SDLO relating to the letter to the editor of the Bundaberg Newsmail and at the bottom of the page currently obscured, as I recall it says "CC Dan Bergin"?-- Right.

50

You indicate that Dr Patel approached you requesting a letter of support. Had the Bundaberg Newsmail published something critical of Dr Patel personally?-- I - there had been some media but I can't recall exactly what was printed now.

He indicated to you that unless support was provided by you,

his District Manager, he would leave within 24 hours. Now, he acknowledged that you provided support to him but he wanted further backing?-- Yes.

1

Is that the case?-- My-----

Did he want something public?-- My advice to him was that he was entitled to natural justice and that there was a process in place for that to occur and, yes, he wanted something public - public.

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COMMISSIONER: What - sorry, to have interrupted. What support had you given him?-- Oh, I had spoken to him and said that - you know, that he was entitled to natural justice and I was sorry that there - this publicity had occurred before the process was completed, the investigation was completed.

Anything else?-- Not that I recall, no.

Thank you.

20

MR ANDREWS: By March you must have been concerned that there may have been some truth to the criticisms about his clinical judgment and skills?-- Dr FitzGerald hadn't raised with me concerns in relation to - there was nothing that was coming to me from Dr FitzGerald which indicated that he had concerns, no.

Do you mean Dr FitzGerald had neither supported nor condemned Dr Patel's clinical skills and judgment?-- Yes, he hadn't made comment either way.

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COMMISSIONER: Did you ask him?-- I met him at a zonal forum. The date might be here. I think it was either the 17th or the 18th of March, I'm not sure exactly, and had - yes, 17th and 18th of March. He had been presenting at a zonal forum and I asked him how his investigation was going and whether there was anything that I needed to be aware of and he said that he was - that there had been some delay because he was doing some benchmarking of figures, but he didn't indicate to me any views about his findings or what he thought.

40

He didn't say, "This man's dangerous. You better suspend him straightaway"?-- No, he didn't.

Or anything like that?-- Anything like that. He gave - there was no indication - I received no indication that there was - that he had concerns.

Mmm-hmm. Do you know what information had been provided to Dr FitzGerald?-- I don't know all of the information. It was being coordinated from Darren's office and his secretary, but all of the documentation that I had received from Toni Hoffman and a number of nurses was sent to him along with a copy of the peritoneal dialysis audit document.

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What were the documents from the other nurses that you had?-- There were some documents that came in after Toni Hoffman's

letter from - and I'm just reading it from the list here because I can't recall them all properly. 1

Yes. But there were some - but they were after Toni Hoffman's letter?-- Yes.

All right. Thank you?-- And then there were some further letters that were received in early January.

Mmm-hmm. 10

MR ANDREWS: It seems from this e-mail that you attached a copy of correspondence you intended to send to the Newsmail and it seemed you discussed the content with the zonal manager?-- Yes.

Was this correspondence this document that I'm about to put on the screen?-- No.

Thank you. Was it this document?-- No. 20

Good. Would you look at this, please. Is that it?-- Yes.

Within that letter to the Newsmail you say you've received no advice indicating that the allegations have been substantiated?-- That's correct.

Was that another way of saying the review process is not yet complete?-- Yes. 30

COMMISSIONER: But you had received substantiation of the complaints, hadn't you? You'd received substantiation from Dr Behrens, Dr Risson and Dr Strahan?-- I didn't consider those as a substantiation of the complaints. I'm referring to the investigation - I wanted an independent investigation done outside of the hospital and that's what I was referring to. I was referring to Dr FitzGerald.

I see. 40

MR ANDREWS: Was this to control the damage of adverse publicity that you wrote this letter?-- It was partly that, yes.

It was false by omission, wasn't it, that letter?-- No.

You know the expression "spin" and the expression "snow job". Do you regard that letter as involving some elements of spin or snowing the reader?-- No, the - the intent of the letter was to say that, you know, I felt that a process of natural justice was important. 50

COMMISSIONER: But it also gives the impression that you thought you had a safe system and that so far Dr Patel, in your opinion, was a safe doctor?-- Well, it didn't say that. It was saying that - well, it was saying the allegations hadn't been substantiated and as you'd indicated before, it was - I hadn't received a-----

Well, it seems to me at the moment that that's the impression it conveys; that's the impression that it was intended to convey?-- No, I disagree with that.

MR ANDREWS: You say that a range of systems are in place to monitor patient safety?-- Yes.

What was that range of systems you had in mind?-- The adverse event system, clinical indicators, those things.

COMMISSIONER: And the extent that they existed, they had revealed to you matters of grave concern about the safety of patients at Bundaberg Hospital at the time you wrote that letter?-- The adverse event system and clinical indicators hadn't. That was one of the issues. The data I was seeing - we were receiving was not corroborating concern.

MR ANDREWS: Isn't it the case that on the 22nd of October you'd become gravely concerned that - you nodded. You were indicating yes?-- Yes.

That after meetings with Dr Risson and Dr Behrens and Dr Strahan, you were at least as concerned?-- I was concerned but the medical staff who were advising me, being Dr Keating and then Dr FitzGerald, were not telling me that there were concerns.

With the death of Mr Kemp on the 21st of December, you must have been concerned about Dr Patel and his judgment?-- I don't - as I said, I don't have a lot of recollection of Mr Kemp, it was part of a general concern, but I don't have - don't recall specifically in relation to that.

Ten days later when Dr Rashford e-mailed you suggesting that there was a sentinel event relating to a patient of Dr Patel's, you must have been concerned about Dr Patel?

MR FREEBURN: Well, we should be clear about this. Dr Rashford heads his e-mail "a sentinel case" but the text in the e-mail isn't to certify it being a sentinel event and, in fact, it isn't. It doesn't fit the criteria.

MR ANDREWS: Well, Commissioner, in response to that objection, let me say that I accept the accuracy of a portion of Mr Freeburn's submission but the evidence that's been given from the Bar table by Mr Freeburn that it does not fit the criteria of a sentinel event is a matter that ought to be given by one of the witnesses.

COMMISSIONER: I will let you ask the question.

MR ANDREWS: You must have been concerned 10 days later on, about the 1st or 2nd of January, when you received an e-mail from Dr Rashford headed or using the word "sentinel"?-- I was concerned but, as I said, the matter had been taken to Darren Keating. He'd investigated it and that had allayed my concerns.

You must have been concerned when you wrote to Dr Scott on about the 13th of January because no review had yet started?-- In January I was concerned about getting that in place, yes.

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Because you were concerned to have Dr Patel's clinical skills and judgment investigated?-- Yes.

And yet, this newspaper article suggests nothing about your concerns. You'd agree with that, wouldn't you?-- Yes.

10

To that extent it's misleading by omission, isn't it?-- No, I don't believe that.

COMMISSIONER: You plainly had serious doubts about the clinical competence and judgment of Dr Patel at the time you wrote that letter, didn't you?-- I had doubts but I wasn't - that's why I'd had it investigated but the investigating officer had not given me any advice that my concerns were justified.

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He'd given you no advice one way or the other?-- No, but if he had been concerned, I would have expected him to make contact with me, and that hadn't happened.

Yes.

MR ANDREWS: I tender that photocopy of the letter to the editor.

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COMMISSIONER: That will be Exhibit 473.

ADMITTED AND MARKED "EXHIBIT 473"

MR ANDREWS: Now, you will see that on the monitor there remains your e-mail to Paul Dall'Alba SDLO and at the bottom of it you make reference to "Dan" because you've CCed the e-mail to Dan Bergin. Do you see that?-- Yes.

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Now, you observed to Dan, "You have not referred to the proposal to include a statement about no letters of complaints re treatment". Had there been a proposal from Dan that in the letter that you were to write to the editor you were to say that there were no complaints about Dr Patel's treatment?-- Yes, he asked whether there had been complaints about Dr Patel's treatment - about patients and I said that I couldn't recall any, but I was concerned about that because I didn't recall and I went looking and I just felt it wasn't the right thing to do, so that was my response.

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In fact, it seems that you found a letter of complaint?-- Yes.

From that paragraph?-- I can't recall what that was.

And you declined to put anything in that was so false?--  
Well, it wasn't right so I wasn't-----

1

COMMISSIONER: Well, not only wasn't right, it was so plainly false that you would have been likely to be caught out if you'd said it?-- That wasn't my intent - that didn't enter my head.

That was the fact though, wasn't it?-- It wasn't a matter of being caught out or not. I just didn't feel that it was the right thing to do.

10

Because it was so plainly wrong?-- Well, it was wrong, yes.

MR ANDREWS: Were you getting pressure from above, that is from Mr Bergin, to out this bad publicity file?-- I wouldn't put it in that sense. It was about managing the media. His expectation is that we would respond to the media but that was it.

20

Thank you. I tender that e-mail.

COMMISSIONER: That will be Exhibit 474.

ADMITTED AND MARKED "EXHIBIT 474"

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MR ANDREWS: Would you look at an e-mail of the next day from you to Mr Bergin and Mr Michaels. Is it the case that Dr Patel just resigned?-- Yes - well, he - I mean, he - he told me that he was going to resign.

40

50

And that he was threatening to take legal action against a variety of staff and against Queensland Health itself?-- Yes.

1

And he was doing this because they "failed to stop the leak of confidential material"?-- Yes.

And because they failed to provide definitive support to him in relation to the allegations?-- Yes.

10

Is it the case that in all of the contracts signed by employees of Queensland Health, there is a pro forma section relating to confidentiality and the Code of Conduct?-- Yes.

And does it read "In the course of their work, health service staff come in contact with information that must be kept confidential at all times. All employees are reminded that irresponsible discussion of any matters regarding the health service facilities, staff and, most importantly, the patients is regarded as an offence."?-- That's correct.

20

Did you, at the time, have an opinion that it was correct that staff were liable to be sued - I beg your pardon, liable, if sued, for leaking confidential information about Dr Patel?-- I don't recall having any opinion on that at all.

Well, it is plain that you knew Dr Patel was asserting a view that people would be liable when he sued them because they leaked information about him?-- Yes.

30

What did you do when Dr Patel raised these matters with you?-- There was nothing I could do. He said he had resigned, effective immediately. So I don't recall actually talking to Dr Patel about that in any detail. That was that. Our issue then became finding cover for the hospital in terms of surgical care.

Yes, that practical issue was one you were seeking to attend to immediately by discussion with Dr Nydam about flying up another surgeon to cover Dr Patel's absence?-- Yes.

40

I tender that email of 24 March.

COMMISSIONER: That will be Exhibit 475.

ADMITTED AND MARKED "EXHIBIT 475"

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MR ANDREWS: No doubt you discussed with Dan Bergin Dr Patel's threat to sue?-- I don't recall discussing that with Dan, no.

But it is the sort of thing you would discuss with your zonal manager, surely?-- No. I - it was - from my viewpoint, they were the comments of an angry man.



Well, on the 7th of April, when Dan Bergin emailed you on the subject of leaking confidential information relating to Dr Patel, it must be that he emailed you after some communication between you, for otherwise he wouldn't have known about the leaking of confidential information allegation?-- Yes, I can't remember exactly.

1

He has emailed you to ask, "Is there a process going on involving internal audit to investigate this?" Do you see that?-- Yes.

10

He is asking whether you have got an internal audit to investigate who has leaked the information, isn't he?-- No, no, he is referring to - internal audit is the corporate office unit, Internal Audit Branch.

Oh, I see. So he is asking whether the corporate office Internal Audit Branch is investigating who leaked the confidential information to the newspaper about Dr Patel?-- Yes.

20

But had you sought to instigate such an investigation by internal audit?-- No.

I tender that email.

COMMISSIONER: That's Exhibit 476.

ADMITTED AND MARKED "EXHIBIT 476"

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MR ANDREWS: Would you look at your reply by email of the 7th of April? Is it the case that there was a meeting with the staff that day?-- Yes.

And had the Director-General attended?-- Yes.

40

And had the Director-General advised something about that topic that had been raised by Mr Bergin?-- I don't think he specifically referred to an internal audit. He said there wouldn't be a witch-hunt.

And did he say that staff needed to move on from the incident?-- Yes.

COMMISSIONER: The witch-hunt was a general one; there was going to be no witch-hunt into Dr Patel and no witch-hunt into the leaking. That was the whole idea, wasn't it?-- No, that's - that - that's - no, I don't believe it is. I think that his comment was in respect to whoever had leaked the information to the Member for Burnett.

50

I see.

MR ANDREWS: Well, didn't he say that the leaking of

information, including patient details, was unacceptable? Or was that the Minister?-- I have got there that's the Minister. I actually can't really recall. It is a bit blurred now but that's what my email-----

1

Is the email likely to have been accurate because it was done on the day?-- Yes.

COMMISSIONER: The incident you needed to move on from was the incident - general incident involving Dr Patel, wasn't it?-- Yes, I think that was the case, yes.

10

MR ANDREWS: He had already left by the 7th, hadn't he?-- Yes.

Now, you wrote that the bottom line was that regardless of whether an investigation is held or not, you didn't believe the culprit who leaked the information would be found?-- That's right.

20

You said that while on the one hand you would like to "send a strong message to the persons concerned that they are on very dangerous ground", you were concerned that "such an investigation could prove destructive"?-- Yes.

Now, you suggested that "an audit team come up and deliver some training sessions"-----?-- Yes.

-----"around the Code of Conduct"?-- Yes.

30

----- "and deliver some ... scary messages"?-- Yes, I thought it was a serious matter and the seriousness of it, given that patient information had been leaked, needed to - people needed to be aware of it.

Well, wasn't it also serious because it had achieved the extreme risk rating that Queensland Health had devised of bringing Queensland Health and its reputation into serious nationwide disrepute?-- I didn't think of it in those terms.

40

Did you anticipate that the audit team, by talking about the Code of Conduct, would be able to frighten the staff so as to prevent them from going to the press about clinical concerns?-- It wasn't my intent to have something that would occur that would frighten staff but I felt it was very serious because patient information had been leaked. It was contrary to the Code of Conduct and, you know, it is a - it is a rural community, people are known to each other. It is not often difficult to work out who somebody is when information is released.

50

And did Queensland Health's employees come up and deliver some training sessions on the Code of Conduct shortly after this?-- Not that I am aware of but I left shortly after that anyway.

Do you know whether there were any training sessions that would routinely have occurred shortly after this? I am talking about routinely?-- There were some Code of Conduct

training that was conducted by the HR department a few times a year.

1

I tender that email.

COMMISSIONER: Exhibit 477.

ADMITTED AND MARKED "EXHIBIT 477"

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MR ANDREWS: Would you look, please, at this letter to Dr Patel - or this copy, the original presumably is with the doctor. If you look at the bottom of the page you will see there is position for the signature of Viv Chase as chairperson of the Bundaberg District Health Council?-- Yes.

Because of the way in which Queensland Health documents are dated, I am unsure of whether that's the 5th of April or the 4th of May. Can you recall?-- No.

20

This document, you will see "inquiries to Peter Leck, District Manager" is at the top?-- Yes.

And it is a letter of support on behalf of the District Health Council?-- Yes.

Were you a member of that council?-- Not a member but I would participate in meetings.

30

Its correspondence would be prepared by - that is typed by your secretary, Ms Dooley?-- Yes.

And.

COMMISSIONER: Drafted by you?-- I don't recall drafting this letter, but I accept that I may have been involved in doing that. I wouldn't usually do it for Viv. He would usually draft his own letters and occasionally I would, you know, make an amendment or an alteration.

40

Would you have suggested this, do you think?-- As I recall, or certainly reading through the documents, there was a decision made at the District Health Council meeting - I think it was late March - saying that they wanted to provide a letter of thanks to Dr Patel.

Was that at your suggestion?-- No, it wasn't.

50

You knew about it, though?-- I knew they'd made that decision, yes.

You didn't say, "That's not a good idea."?-- No, I didn't.

MR ANDREWS: Well, indeed, are you aware that Ms Dooley's recollection is that this letter is a letter dated the 5th

of April and that as far as she recollects it was handwritten by you and collected by her from your out-tray for typing?-- I haven't read Joan Dooley's evidence.

1

You wouldn't disagree with it, would you?-- I don't recall writing it, but, as I said before, I accept I might have been - may have been involved in it.

COMMISSIONER: You may have written it out in hand, as she suggests. That may be correct?-- I don't recall doing that but it may be, yes.

10

Yes, all right.

MR ANDREWS: And the expression of thanks for the care Dr Patel provided to the residents of the community, I suggest that was your drafting?-- No, I don't have any recollection of that.

COMMISSIONER: You don't mean no, it wasn't; you mean you just don't know?-- I just don't know, no.

20

Because you have already accepted that it may have been, as your secretary said, that you wrote it out in long hand and it was typed by her?-- That may have been the case.

MR ANDREWS: And where Mr Chase has given evidence that he did not suggest that portion of the letter, you wouldn't disagree with him?-- I don't - I wouldn't know. I don't know.

30

You were the person who authorised payment of Queensland Health funds for Dr Patel's airfare to return from Bundaberg to the United States?-- Yes.

It was within your discretion as a district manager to authorise payment of funds in that amount for such a purpose?-- Yes, I believed it was.

And did you agree that nothing within Dr Patel's contract entitled him to such a payment?-- I thought it was - I thought it was an entitlement, that it was normal to do that. Certainly I - it had been my experience when I was in Mt Isa that we would always - when we had people from overseas, we would always fly them back, but I didn't check his contract.

40

On the 1st of April 2005, I suggest that you had a telephone conversation with Duncan Hill, a registration officer at the Medical Board, in respect of Dr Patel?-- Yes.

And that you advised that Dr Patel had been in your office all morning on the 1st of April?-- Right, yes.

50

Do you remember-----?-- Yes, I remember him being there. He was upset.

And that he couldn't make up his mind as to whether to accept the position or not?-- Yes, he was - there was a time when he was considering withdrawing his resignation and taking up a

new contract.

1

And I gather that on the 1st of April then you were prepared to let him take up a new contract?-- Yes, because I had still no information at that time from Gerry FitzGerald.

And would you have said to Duncan Hill Dr Patel had left your office with the intention not to accept the position "but he would probably change his mind."?-- I don't recall that.

10

COMMISSIONER: But you had made him an offer on that day?-- There - no, I hadn't made - I hadn't made an offer. There had been a previous offer that he had accepted previously to take effect from the 1st of April.

Well, he was reconsidering that and you were encouraging him to do so?-- No, I wasn't. I wasn't encouraging him.

You weren't?-- No.

20

But you obviously were happy to renew the contract?-- I wouldn't - no, I wouldn't say I was happy for him to renew the contract.

You wanted him to renew the contract?-- No, no, I didn't. I wasn't happy with the situation.

Well, did you say to him the position is no longer open?-- No, I didn't. I just let him talk. He was just upset and angry.

30

But do you agree that you said to Mr Hill that he may change his mind - Dr Patel may change his mind?-- I don't recall saying that.

You accept you could have said that?-- Yes, I could have said that.

Doesn't that indicate that if he had changed his mind, you would have kept him on?-- As I recalled, he had signed off on a contract from the 1st of April already. So he was - his - there was a - his contract expired on the 31st of March and there was another one to commence on the 1st of April.

40

But he'd put an end to that by resigning on the spot, hadn't he?-- He had. But I had received nothing in writing.

No. You seem reluctant to admit this but I can't see why it is so at the moment, because it seems plain that on that day, on the 1st of April, you were prepared to have him continue on for another contract?-- I was prepared-----

50

MR FREEBURN: Commissioner, he hasn't-----

WITNESS: I wasn't-----

MR FREEBURN: He did say he is still prepared to let him take up-----

COMMISSIONER: But he keeps denying it. I am just trying to get his clear answer?-- I was prepared - I was - I was pleased that he decided to go, given the circumstances, but I was prepared for him to take it up, yes.

1

MR ANDREWS: Well, indeed, would you look at this letter written by you to Duncan Hill?-- Yes.

Does that remind you that Dr Patel had been offered a further contract from the 1st of April 2005 to the 31st of July in the same year?-- Yes.

10

But he hadn't yet taken up that offer?-- Yes.

Now, that seems to be a short-term contract, 1st of April to 31 July?-- Yes.

Do you remember the circumstances? Was it a locum position you were offering him?-- I didn't - I personally didn't offer him the contract at all, but my recollection is that there was concern about replacing him and the short-term nature of that contract was to allow recruitment to take place.

20

Thank you, Mr Leck. I have no further questions for you.

COMMISSIONER: Who is next?

MR MULLINS: Mr Allen is going to go first.

30

COMMISSIONER: Mr Allen, all right. You tell us when you need a break, Mr Leck?-- I can keep going a little - I am feeling a little tired but I can keep going for a little longer.

All right. Just let us know.

CROSS-EXAMINATION:

40

MR ALLEN: Mr Leck, my name is John Allen. I am appearing for the Queensland Nurses' Union?-- Right.

Could I ask you firstly about the letter that you received at the time of a conversation with Toni Hoffman in February or March 2004?-- Yes.

And that's exhibit TH10 to Ms Hoffman's statement, Exhibit 4. You have seen that before?-- Yes.

50

Now, did she present that document to you at the time that she met with you?-- She did, yes.

And did you have a conversation with her about the matters in that document?-- I can't recall that there was a lot of conversation about the content. I recall that Tony said that

she wanted to bring something to my attention, that she was concerned about Dr Patel's behaviour, but she didn't want me to do anything about it and she was just wanting to make me aware.

1

Now, the document itself spoke about Dr Patel's behaviour, but it also spoke about some matters of concern in relation to the operation of the intensive care unit?-- Yes.

In particular, that he would make decisions which exceeded the capability of the intensive care unit; that's so?-- I can't remember that being specifically said. I am just looking for the wording.

10

Well, the suggestion was that when long-term - or patients requiring long-term ventilation should be moved to Brisbane, that would work well except where Dr Patel's patients were involved?-- Something to that effect, yes.

20

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50

Now, he allegedly claimed that he could use contacts in Brisbane to block patients being transferred?-- I don't recall that being said.

And there was further - well, it is in the document. You recall receiving the document, don't you?-- I do, yes.

And there was reference to the fact that whereas Dr Carter, who was the head of ICU, was usually supportive and proactive about transferring patients, there was an exception in the case of Dr Patel's patients?-- Yes.

And that was related to Dr Patel's intimidatory manner?-- Yes.

Did you speak to Dr Carter about the issues that were raised in this correspondence?-- No.

When Ms Hoffman said that she did not want any formal action taken in relation to it, did you understand that to be an indication by her that she didn't want it to be regarded as an official complaint?-- She didn't - when you say "no formal action", she didn't want any action taken. She didn't regard it as - she did not regard it as a formal complaint. All she said is she wanted to make me aware but that she didn't want me to do anything about it.

Are you sure she wasn't conveying that she didn't want to initiate any formal grievance or investigation process?-- Yes, she wasn't conveying that.

Well, I take it that she was conveying that she didn't require you to start a formal grievance process?-- She didn't want me to do anything.

She didn't want you to undertake any formal investigation at that stage?-- No.

What did she say to indicate that she didn't want you to take any action at all?-- I - she just repeated that. I assured her that if she wanted me to do something, all she had to do was to let me know, and - but she just said, "No, I just want to make you aware." I can't recall that she said anything else.

You didn't feel prohibited from making inquiries in relation to the matters she had raised at that time?-- I did end up making inquiries relating to - with the DON and the Director of Medical Services, but she made it clear that she didn't want me to do anything.

You didn't feel prohibited from speaking to the Director of Nursing or the Director of Medical Services about the matters raised in the letter, did you?-- No.

Why didn't you inquire of Dr Carter about the matters that were raised?-- Because I felt that she - I mean, she just didn't want any action taken. I thought that if she - I



encouraged her if she did want to change her mind down the track, just to let me know. So, she wasn't - she wasn't certain or she was just - I mean, what I can recall in respect of that is she said, "I just want to make you aware, but I don't want you to do anything."

1

But ultimately the decision was yours as to what you did with the information?-- Yes.

And you didn't choose to speak to Dr Carter?-- No.

10

Or to speak to Dr Patel about any of the allegations that have been raised?-- No.

Including the fact that he would allegedly threaten to go straight to Peter Leck as he had earned you half a million dollars that year?-- No - no, I didn't talk to him about that. To me, that indicated that he had an ego - not uncommon for a surgeon, in my experience - to have - you know, to be egotistical.

20

But not only egotistical, but to be alleging to staff that he had a special relationship with yourself which would protect him from any scrutiny by management?-- Well, that wasn't my understanding.

The allegation was that he would use your name in the context that he was of such value to the hospital that his behaviour could not be challenged by staff; that's not how you understood it?-- I'm sorry, can you repeat the question?

30

Wasn't the allegation - and you will see that the words "straight to Peter Leck" are highlighted - that Dr Patel would threaten to go straight to Peter Leck because of the - in effect, the value of Dr Patel's services to the hospital, and that he would use that by way of a threat to staff?-- I didn't see that as particularly significant. Dr Patel was loud, and so forth. I just didn't interpret that as threatening.

40

All right. Could we just go down a little bit? There was an allegation made that nurses were literally refusing to care for Dr Patel's patients because of disunity in the Intensive Care Unit. That would have been a matter of concern to you?-- Yes.

You didn't make any further inquiries as to whether there was substance to that or not?-- No.

And you certainly didn't speak to Dr Carter as to whether the admission and discharge policy of the ICU was being adhered to?-- No.

50

Or make any further investigation as to whether there had been instances of Dr Patel refusing to transfer patients to Brisbane?-- No.

Now, Ms Hoffman indicated that she had accompanied Dr Jon

Joiner to meet with Dr Darren Keating in relation to the issue of undertaking oesophagectomies?-- Yes, I just don't recall that. I mean, it is in the letter, but I don't recall that part of it.

1

You didn't make any inquiries of Dr Joiner about that subject?-- No.

What about any inquiries of Dr Keating?-- I spoke to Dr Keating after I had spoken to Linda Mulligan and indicated to him that concerns had been raised with me in relation to Dr Patel's behaviour and in relation to the transfer of patients out of ICU. Dr Keating indicated that there was a personality conflict between Toni Hoffman and Dr Patel and he became a little short with me and said, "You know, if this keeps on going, Dr Patel will leave, and Jim Gaffield won't be far behind."

10

Can we come back to that, because you said that followed a conversation with the Director of Nursing?-- Yes.

20

Now, do you agree that you would have received this document and spoke to Ms Hoffman in February or March of 2004?-- I think it was March. It was, I think, the week prior to the commencement of Linda Mulligan as Director of Nursing.

Okay. And you recall, according to your statement, that she started work on 17 March 2004?-- Yes.

And you spoke to her about this letter - TH10 - or at least that part of it which had been given to you at that time which concludes at the end of the highlighting and arrow?-- I went to talk to Linda about it and I said I had received this correspondence from Toni but that Toni didn't want me to do anything with it, and Linda said that her usual response in that situation would be to hand the letter back and ask the staff member to give it to them when they were prepared to lodge a complaint. So, Linda didn't want to be made aware of the contents of the letter. She did say that she had spoken to Toni; that Toni, in handover, had indicated that she had been to see me; that there was - there were no clinical issues; that it wasn't important, and that she would get back to her.

30

40

So, you say that she spoke to Linda Mulligan at your first meeting with her?-- Yes.

So, was that on or about the 17th of March, the day that she started?-- I think it was within a week or so. Linda did some orientation and so forth, so it was when our first scheduled meeting was.

50

And you say that Ms Mulligan told you that Toni Hoffman had told her of the meeting she had had with you?-- Yes.

Earlier that month?-- Yes.

And that she had given you a letter, or a document?-- I don't

recall whether she said that was the case, but she said she had met with me.

1

And Ms Mulligan told you that Toni Hoffman described speaking to you about behavioural issues?-- Yes, that there weren't any clinical issues.

Ms Mulligan had said that Toni Hoffman said that there were no clinical issues?-- Yes, and my understanding is that Ms Mulligan clarified - from what I can recall, Ms Mulligan clarified that with her - that there were no clinical issues.

10

Well, you would have been able to tell Ms Mulligan, if she told you that, that that was quite wrong, wouldn't you?-- No, because Linda didn't want to - Linda didn't want to know the content of the complaint because it hadn't been lodged as a formal complaint.

But there clearly were clinical issues in relation to the running of the ICU, weren't there, raised in the document Ms Hoffman had given you?-- Looking at it now, yes.

20

Looking at it then, surely, you would have realised that?-- I just felt a little chastised in that circumstance and that it wasn't appropriate to discuss it any further.

Because Ms Mulligan took the view that if Ms Hoffman had not been prepared to give it the status of a formal complaint, it shouldn't be considered at all?-- That - yes, the impression I had was that, you know, if that - if she wasn't prepared to do that, it was more than likely to be personality based. That was the impression I had, although I can't remember the words.

30

But you yourself still had the document?-- Yes.

At the time that Ms Mulligan said, "Well my approach would be I'd simply hand the document back until the staff member was prepared to elevate it to a formal complaint.", you still had possession of the document that Ms Hoffman had given you?-- Yes.

40

But Ms Mulligan indicated she didn't want to know the contents?-- Yes.

Indeed, you say in paragraph 18 of your statement that you put a copy of Ms Hoffman's letter in bring-up files-----?-- Yes.

-----that you kept for both Dr Keating and the new incoming Director of Nursing?-- Yes.

50

So, were they separate files?-- Yes.

And what sort of format was involved in those?-- They are just different coloured manila folders.

One for Ms Mulligan, one for Dr Keating?-- Yes.

So, did you photocopy the document that Toni Hoffman had given you?-- Yes. 1

Did you make two copies, one for each folder, or one copy, and put the original in one of the folders?-- As I recall, I made one copy and put the original in one of the folders.

And would there be a note made as to - to remind yourself that you needed to speak to both of those persons about the document?-- There wouldn't be a note. It was just a file I would look at before each meeting - a meeting I had with them each week. 10

And despite Ms Mulligan's comment as to the fact that she would have, in her practice, simply handed the document back, you retained the copy on Ms Mulligan's bring-up folder?-- There, and also I had like a - an action file area next to my computer where I would keep stuff that might be in progress. So, I had it there, and then because I was concerned about whether or not Toni would raise issues again from time to time, I asked Linda whether or not Toni had been - during our weekly meetings, whether or not Toni had spoken to her further about Dr Patel's behaviour, and she indicated that he hadn't, until some time down the track - and I don't know when it was - she talked about having met with Toni to talk about behaviour management strategies. 20

Was that some time after the initial meeting you had with Linda Mulligan where the document on the screen was discussed?-- Yes. I don't know when. It was quite a while after that. 30

Did Linda Mulligan indicate what had provoked that discussion about behavioural management?-- No. Well, I don't recall that she did.

During the first meeting that you had with her, she expressed an opinion if a staff member wasn't prepared to make a formal complaint, it is probably just a personality issue?-- I can't remember her words, but that was the impression I had. 40

Did you, subsequent to that date, have any discussions with Linda Mulligan regarding Toni Hoffman and Dr Patel and any personality issues that might exist?-- Not that I - well, I just don't recall.

Did you speak to Linda Mulligan after - well, no, I withdraw that, and I'll come back to that later. After this meeting with Linda Mulligan, you spoke to Darren Keating about the document TH10?-- Yes. 50

Do you remember how soon after?-- I don't know. I think it was within a few days to a week.

And did you consult the bring-up file in relation to that?-- No, I went to see him, so it wasn't at a normal weekly meeting, and raised it with him then.

Did you take a copy of the letter with you, or the document which is TH10?-- Yes.

1

And you say in your statement, paragraph 23, you took the letter to his office and indicated that Ms Hoffman had spoken with you about Dr Patel?-- Yes.

You have qualified paragraph 24, so that your evidence now is that you gave Dr Keating a verbal summary of the letter, but you are not sure if you showed him the actual document?-- That's right.

10

When you say that you gave him a verbal summary of the contents-----?-- Yes.

-----were you referring to the document?-- I don't recall. I just recall speaking to him about it.

Are you able to recall the extent of the summary you gave him?-- I remember talking to him about the - that there was an allegation that Dr Patel had described the Intensive Care Unit and its staff as third world and that there was some concern about him transferring or delaying the transfer of patients.

20

Can we go up to the top of the document again? So, you said that there was a concern about Dr Patel's patients being transferred?-- Yes.

And can we go back down again? Go to the last paragraph that's highlighted. I take it you would have raised with him the fact that Ms Hoffman had reported to you that she voiced her concerns regarding the level of care required for some of Dr Patel's patients several times?-- I may have, but I don't recall that.

30

You certainly would have queried Dr Keating about the fact that Ms Hoffman reported accompanying Dr Joiner to meet with Dr Keating in relation to the issue of oesophagectomies?-- Again, I don't recall. I remember the meeting was short - was short in duration, and that Darren was also a little short in temper, and it wasn't a long meeting.

40

Why do you say he was short in temper?-- Well, that was just his - just how he approached me.

He was dismissive of the matters raised in the document as summarised by yourself?-- Yes.

And in paragraph 25, you say that he expressed the opinion that the problem was entirely related to a personality conflict; is that so?-- I can't recall his exact words, but that was the impression that I had, yes.

50

So, you didn't see it as possible to further debate with him the issue about whether oesophagectomies should be undertaken at the Bundaberg Base Hospital?-- No, I don't recall discussing that with him.

1  
But your Director of Medical Services indicated in response to your summary of the matters in that document that there were really no matters of clinical concern?-- He just said it was - well, I can't remember the exact words, but basically he said it was a personality problem, and he was concerned that "if this keeps ongoing, that Dr Patel will leave".

So, his major concern was the possibility of losing Dr Patel's services in the context of the issue that you raise?-- Yes. 10

You're quite certain that you spoke to Dr Keating about these matters relatively soon after the meeting with Toni Hoffman in March of 2004?-- Yes, I don't know exactly when, but it wasn't long after.

It was certainly well before the 20 October 2004 meeting with Toni Hoffman?-- Yes.

Six months or so before that, at least?-- Yeah, approximately, yes. 20

Yes. Now, just in relation to the document that turned up on your desk between January and June of 2004, headed "Peritoneal Catheter Placements"-----?-- Yes.

-----you are not sure whether it was the version which is Exhibit 18 or Exhibit 69?-- Yes. I'm not sure, no.

Now, are you able to narrow the time frame at all in relation to that six month period, the first half of 2004, as to when you would have first seen the document?-- The only thing I can remember thinking was that it wasn't long after I'd seen it that the service with Baxter at the Friendly Society Hospital started, but----- 30

Do you remember when that started?-- Well, I thought that was - I thought - it was June - well, it was around the mid-year. Maybe a bit later than that.

Around the middle of the year?-- Yes. 40

Is that why you are able to say it was in the first half of 2004 that you saw the document?-- That's what I think, yes.

And probably, what, subsequent to the meeting with Toni Hoffman when she gave you the document TH10?-- Well, I don't know. I can't recall anything else other than what I've just said. 50

All right. Now, how soon after you first saw the document on your desk did you take it to Dr Keating and discuss it with him?-- Straightaway.

Straightaway?-- Mmm.

Okay. And he indicated that he had already seen the document?-- Yes.

And that he wasn't concerned about the contents of it?-- No, that's right. He wasn't concerned.

1

Now, that conversation with Dr Keating, in relation to the contents of that document, obviously occurred some months before the meeting with Toni Hoffman of 20 October 2004?-- Yes, I believe it did.

Well, you'd certainly reject any suggestion that you only saw a document regarding peritoneal dialysis catheter placements after that October 2004 meeting with Ms Hoffman?-- No, I don't think that's correct.

10

No. Because your recollection is you'd received it at least four months earlier than that?-- Well, I'd received it earlier than that and, as I was saying, I think it was between January and June.

And you discussed it with Dr Keating within, what, days of the proceeding?-- Probably the same day or the next day, yes.

20

You didn't ask Dr Keating at that time how many catheter placements had been done by Dr Patel?-- No.

Or any other doctor?-- Not that I recall.

You weren't curious to find out whether the six patients with complications were the total pool of patients who had had catheters placed?-- No, I just - I had concerns that - my focus was that there had been complications and that there had been a couple of deaths, but Darren provided me reassurance, and that was it.

30

COMMISSIONER: If it had been 100 per cent, you would have been much more concerned than if it was one or two or five per cent of catheter placements?-- I think I would have been, yes.

And you didn't ever ask?-- No.

40

MR ALLEN: And you don't recall Dr Keating saying anything on that topic either way? He didn't volunteer any information on that to you?-- No - about the proportion of - no.

50

Now, you became aware of the events regarding Mr Bramich and his death quite soon after the events?-- Yes.

1

And there was a discussion it seems as to whether the event was a sentinel event?-- Yes, there were two forms that had been received, a sentinel event form and an adverse event form.

They were describing different circumstances though, weren't they?-- I can't recall.

10

You can't recall, okay. But did you speak to Dr Keating as to whether or not he had an opinion that it was a sentinel event that needed to be reported to head office?-- I can't recall the details of my conversation with Dr Keating other than that I'd asked him to, you know, have the matter investigated. It was - I had spoken to the quality co-ordinator in terms of whether it was a sentinel event or not. I don't recall discussing that with Darren.

20

When you were interviewed by counsel assisting in May this year you - excuse me, June, 15th of June this year, you were asked a question and it's at page 32 of the transcript about halfway down the page?-- Yes.

"Did the Director of Medical Services express an opinion to you about whether it was a sentinel event?" And this is in the context of Mr Bramich, about halfway down page 32. And it seems that your response was, "I can't remember the wording but he did not feel that it was a sentinel event"?-- Mmm. My recollection-----

30

Do you recall him expressing a view on that topic?-- No, I can't really be sure. I just can't recollect. I remember discussing it with - raising it with the quality unit but I just can't recall in my discussion with Darren whether that was the case.

Now, you understood that - then that Dr Keating was going to undertake an investigation into the circumstances regarding Mr Bramich?-- Yes.

40

And was he reporting back to you about that topic?-- Yes, from time to time in our regular meetings I'd ask how it was going but I can't recall the details of that.

But there would have been then some communications between that time, which was early August 2004, through to your meeting with Linda Mulligan and Toni Hoffman on the 20th of October 2004 where that was the subject of discussion between yourself and Dr Keating, you asking him how the investigation was going?-- Yes, yes.

50

And him speaking to you?-- Yes.

Did he express any view as to whether he had concerns about Dr Patel's competence during that period of time?-- No.



I mean, expressing any views one way or the other?-- Oh, I can't remember exactly the time frame but he indicated at some stage that he didn't believe there was a problem with the management of that patient.

1

After you receive or after you speak to Toni Hoffman on the 20th of October 2004 did you have an immediate discussion with Dr Keating or did you wait until you'd received the letter dated the 22nd of October 2004?-- Sorry, could you just repeat that again.

10

Yes. You met with Linda Mulligan and Toni Hoffman on the 20th of October 2004?-- Yes.

And she detailed certain matters of concern regarding Dr Patel?-- Yes.

Which were recorded by yourself in a file note?-- Yes.

And then a couple of days after that you received a letter?-- Yes.

20

From Toni Hoffman dated the 22nd of October 2004?-- Yes.

Do you recall speaking to Dr Keating about the matters raised between those two dates?-- I expect that I would have but I don't recall.

But you certainly did speak to him about the matters after you'd received the letter dated the 22nd of October 2004?-- Yes.

30

And did you give him an opportunity to read that letter?-- Yes, I think it was sent to him.

Okay. You say that in paragraph 52 of your statement that it was on or about the 5th of November 2004 that you met with Dr Keating to discuss what actions should be taken in relation to Dr Patel?-- I'm sorry, it was about - oh, yes, it was after we had finished the meetings with the three doctors.

40

I see. Okay. So I suppose you would have spoken to him on or about the 22nd of October 2004?-- I can't remember exactly when I spoke to him but it was around that time, yes.

And when you spoke to him, it was decided that these doctors should be spoken to?-- Yes.

Okay. And you were present during those conversations between-----?-- Well, he didn't actually - I don't think - as I recall, he told me the doctors - that we would speak to those specific doctors. I asked that he arrange for some - for us to speak to some doctors and he then, you know, made the arrangements for that to happen.

50

Okay. The way that you're able to date the conversation you refer to in paragraph 52 of your statement with Dr Keating is that process of speaking to the three doctors had concluded on

the 5th of November 2004?-- Yes.

1

And in light of what had been spoken of by those three doctors, you then sat down with Dr Keating and discussed where things were to go from there?-- Yes.

You say in that paragraph that even at that stage Dr Keating was reluctant to agree to an external review of Dr Patel?-- Yes.

10

Did he say why?-- Because he thought it was all personality based, that it was conflict between Dr Patel and some of the nursing staff.

How did you counter that argument? What reasons did you present why there should be an external review?-- I just said that I - I don't think I gave a reason. I just said that that needed to happen.

Was it then that Dr Keating decided or that - excuse me. Was it then that Dr Keating provided his thoughts as to who should be conducting the review?-- Yes, he - it was about that time that he said that he wanted somebody who had some regional - country, regional experience.

20

It was at that time too that you suggested - oh, excuse me, he suggested Dr Baker?-- I think, actually, he had - we had talked about looking at who could conduct it and he would have made a phone call and then come back to me and suggested Dr Baker, yes.

30

What did you say in relation to that suggestion?-- I didn't think it was appropriate given the fact that Dr Baker had worked in Bundaberg before and in my view he - one of the things that I was concerned about was that he had actually wanted to be undertaking more complicated surgery and my understanding was that - is that that was one of the reasons why he left - left.

You didn't think that given his particular expertise and consideration as to Bundaberg's capability, that he might be just the right person to undertake a review of Dr Patel?-- No, I didn't. I didn't think that it was appropriate.

40

Did you have some fear that he might present a negative picture because of his own personal experiences at Bundaberg?-- I - Dr Baker had left Bundaberg, you know, with publicity and so forth. He knew - he did know all the players but I just - I didn't feel it was appropriate for him to do it and I wanted independence. I wanted somebody that didn't know the place.

50

Just perhaps as an aside, when he or around the time that he did leave the hospital with a blaze of publicity, did you have a meeting with him along with the Acting Director of Medical Services?-- I vaguely recall that I did, yes. I don't recall the content of the discussion though.

Who was the Acting Director of Medical Services?-- Lyn Hawken. 1

Do you recall saying to Dr Baker, "The Director-General is not happy with the media embarrassment"?-- I don't recall saying that, no.

"Queensland Health is a large organisation and the Director-General will protect the organisation"?-- I don't recall that, no. 10

Do you think you may have said, "We don't want to see your career damaged"?-- I don't - I don't recall the specifics of any of that conversation. I do - I don't recall what I said. I do recall some thoughts and that is that Sam appeared to be using the media to - well, it could be interpreted that he was using the media to scare the public into thinking that there would be no surgical service unless he received additional compensation. So it was - so he appeared to be using the media as a negotiating tool for himself and I felt that he was a bit immature and didn't really know what he was doing in doing that because he wouldn't - he wouldn't get the answer that he wanted and I thought he was - he was a little foolish in doing that. I didn't feel angry with him. I just felt - he was young and he needed to be corrected. 20

Warned?-- No, I don't - no, it wasn't a warning. I - I mean, as - I haven't read Dr Baker's evidence and I believe that he wasn't happy with me but I have no personal remembrance of acrimony between the two of us. I didn't think that in terms of him. 30

Do you recall him at the end of the meeting asking you, "Is that a threat"?-- No, I don't recall that.

Did you have a view as to whether it would be appropriate that the external review of Dr Patel be done by someone from a tertiary hospital in Brisbane?-- Well, I - I personally - I personally didn't have a view. I was happy to accept Darren's advice that somebody with regional experience was more than the appropriate choice and there had been - I had made contact or spoken to Graham Kerridge from the central zone in relation to this and identifying somebody that could do it. I spoke to him at the - at a zonal forum the night before the tilt train crash and he had suggested a - a professor from one of the tertiary hospitals, I think it was Professor Donnelly but I can't be exactly sure on that. And Darren wasn't keen for somebody from a tertiary hospital and I - you know, I was happy to agree that there should be somebody who had had some more rural experience. 40

The day before the tilt train crash, so that would have been, what, about 19th of November?-- I think it was the 16th but I----- 50

Well, mid-November?-- Yes.

So some weeks have passed since the complaints received from Toni Hoffman?-- Yes, there - it was a couple of weeks was - we

didn't start looking for somebody until we had talked to the doctors and established that that's what we had - you know, were going to do.

1

But time is of the essence given the nature of the matters raised?-- Yes, I wanted to see it done as quickly as possible.

And so by mid-November, you'd actually found a candidate who seemed suitable to you?-- No, so because Darren didn't feel it was appropriate and I agreed, we didn't proceed with that - with pursuing the option suggested by Graham Kerridge.

10

But you'd found an option which initially seemed suitable to you until Dr Keating disagreed?-- I had - I had agreed with Dr Keating that it was appropriate to get somebody with regional experience and Graham hadn't suggested that, so I knew that the professor was not somebody that we would proceed to - to ask for.

Why did the lack of rural experience mean that that person would be unsuitable?-- Look, I can't recall what - what the discussion was in relation to that. Surgery in rural and regional centres is usually much broader than what it is in a tertiary setting. So it's - a general surgeon has skills across a range of things as opposed to more specific disciplines but I can't recall what the conversation was.

20

But in any event, you agreed with Dr Keating?-- Yes.

And so that meant the process was going to take even longer?-- Well, we had to find somebody else.

30

What did you do in relation to that at that point?-- Then the tilt train accident happened and for the next few weeks all of us were doing nothing much other than being involved in the response to that. And it was at the end of - towards the end of November that I then spoke to Mark Mattiussi, who was the District Manager at Logan and was also - had been the director of - well, had been the Director of Medical Services, and asked him if he had any suggestions and he suggested a Dr Mahoney, I think it was, from Redcliffe. So I then spoke to the District Manager at Redcliffe to see if he could be released and she said yes, but both Mark and the District Manager there had said that - that he would need somebody to assist him with the process so that he was suitably skilled and so forth. But in terms of the process of him doing an investigation, he would need somebody to assist him doing that. And then I made contact with audit in relation to finding - internal audit in relation to finding who could assist with the process.

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That was on the 16th of December 2004?-- Yes.

Would you agree in hindsight that you should have contacted them well before that?-- In hindsight, I wish I had been faster than what I - what I was.

You could have contacted them in late October, early

November?-- Well, we were looking for the - no, we were looking in the first instance for the clinician - somebody with a clinical background that could do it. I wasn't aware that - about the - you know, about the process issues, the more administrative side if you like until I had learned about Dr Mahoney.

1

Had you involved the District Manager in this process by this stage? Sorry, excuse me, the Zonal Manager?-- No.

10

So, by the time you actually contact the audit office on the 16th of December 2004, you hadn't taken the matter higher up the chain in Queensland Health at all?-- I had spoken to Graham Kerridge, as I'd said, who is the manager of the central zone unit, so he's like the second in charge in the zone.

That's in a different zone, is it?-- No, that's the central zone.

20

Right?-- But I hadn't spoken directly with the Zonal Manager, no.

And you certainly hadn't taken it to head office before the 16th of December?-- Well, I'd taken it to the zone which I guess you could call part of head office but I hadn't spoken to anyone else in Corporate Office.

The only contact with the zone was to ask for advice as to who might be available to do a review?-- Yes.

30

There hadn't been any formal notification that an investigation was underway?-- No.

Or an invitation for the zone to conduct an investigation?-- No.

Had there been a decision made that you keep it in the hospital?-- No, I'm not quite sure what - I know what you mean. There had been-----

40

MR FREEBURN: Keep what in the hospital?

MR ALLEN: The investigation?-- Well, we were having it done - I mean, I wanted it - an external investigation done but I hadn't involved people from Corporate Office other than Graham Kerridge and then audit when I did.

Who did you anticipate, this is prior to the 16th of December 2004, that the external investigator was going to report to?-- To me - prior to the involvement of Dr FitzGerald, to - to myself.

50

Yes, and no higher?-- Well, I would - I would advise the zone in relation to - to any outcome, that would be normal - part of normal process.

See, you hadn't even advised the zone of the contents of

Toni Hoffman's letter of the 22nd of October 2004?-- I'd spoken briefly to Graham Kerridge but not in any detail. 1

Is it the fact that the first time a copy is actually sent to the Zonal Manager is as a CC to the e-mail to Mr Dall'Alba alerting them to the fact that the Bundaberg Newsmail has faxed a copy of that letter to you-----?-- No, there was.

-----on the 22nd of March?-- No, there was a - there was some e-mail correspondence and then a briefing to Dan Bergin in the early part of 2005 but I can't remember the dates. 10

Oh, okay. That flowed on from the fact that doctors in Brisbane had raised matters concerning the 15-year-old boy?-- No. No, it wasn't in relation to that.

Did it flow on from the appointment of Dr FitzGerald to undertake a review?-- Yes.

Okay. But prior to the 16th of December 2004, your intention was that you would find someone to undertake a review who would report to you?-- That's correct. 20

And at that time there had been - the zone hadn't been supplied with a copy of Toni Hoffman's letter?-- No.

And you hadn't formally notified the zone or anyone higher up that there was a complaint by Toni Hoffman?-- I hadn't formally notified them, no. 30

There's a document I can ask you to look at if you need to see it but it's an e-mail from yourself to John Scott on the 12th of April 2005?-- Right. 30

It's JGS12 to Exhibit 317. There is a copy available. This, of course, is after Dr Patel has left the country. It seems that your e-mail is of the 11th of April. Now, you talk about two issues. The second issue, if we just go down a little, "Some months before ICU NUM Toni Hoffman lodged her written complaint about Dr Patel she came and saw me and complained about his attitude and personality conflict." So you're referring to a meeting you had with Toni Hoffman you had in March 2004?-- Yes. 40

"She provided me with a note but said she didn't want me to take the matter any further. I destroyed the note and advised her that if she wanted me to do anything about it then she would need to come and see me, lodge a formal complaint and let the matter be progressed through the appropriate processes." And you said that, ultimately, that's what she did via her letter of the 22nd of October 2004. You say you can't remember all the details in the note, being largely about personality conflict?-- Yes. 50

And specifically around the transfer of an ICU patient to Brisbane?-- Yes.

Now, was that correct, that you had destroyed the document

that she gave you in March 2004?-- I threw out one of the  
copies of the document that I had a couple of months after  
Toni had provided it to me. So I was - when nothing further  
had been - when no further information had come back from Toni  
or from the Director of Nursing, I'd had the copy on my action  
file and I had gone through a range of documents that were - I  
was no longer progressing and threw it out with a number of  
others. I was extremely distressed at this time and couldn't  
remember exactly what had happened. I had gone looking for  
the note and I couldn't find it. I remember that I had made  
another copy to take to Darren but I couldn't find that. Yes,  
I was distressed I couldn't remember everything that was in  
the letter.

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Okay. But you certainly weren't meaning to convey by that that the actual document you'd received from Toni Hoffman had been immediately destroyed?-- No.

Because that would suggest that you couldn't have discussed it with Ms Mulligan - or at least by way of referring to the document, you couldn't have discussed it with Ms Mulligan and with Darren Keating?-- I did.

You did? So you hadn't destroyed it by that time when you-----?-- No.

-----had the conversations with Ms Mulligan and Darren Keating regarding its contents?-- No.

And are you saying that some months after that you did destroy one copy of the document?-- Yeah, I usually clean out my files. I'd have some stuff that might be ongoing for a period of time, that there is no further action required and I will discard it.

COMMISSIONER: That's not what you say in the email though, is it? In the email you say, "I destroyed the note and advised her that if she wanted me to do anything about it then she would need to come and see me, lodge a formal complaint and let the matter be progressed."?-- Yes. I was confusing what had occurred with the discussion that I had with Linda Mulligan. By this stage, on the 11th of April, I was in a very distressed state. I hadn't slept for quite some time.

Sorry, by which date? Which date?-- 11th of April.

I see, yes?-- And, yeah, I couldn't - I couldn't piece together what had happened.

MR ALLEN: So despite the wording of the email, you weren't - I will withdraw that. Despite the wording of the email, it is not the fact that you immediately destroyed the note upon receiving it and told Toni Hoffman that if she wanted to do anything about it, she would have to come back to you and lodge a formal complaint?-- No.

You retained copies of that document for some months?-- Yes.

And had copies of such documents when you discussed the document with Linda Mulligan and Darren Keating?-- Yes.

Some time after that when you discarded a copy of the document-----?-- Yes.

-----did you destroy all existing copies of it?-- No, I don't - I mean, I just recall that I had emptied out the folder that I had that material in. I don't recall anything other than that.

After the meeting with Toni Hoffman on the 20th of October 2004, or after receiving her letter of the 22nd of October



2004, did you attempt to find the document that you'd received from her in March 2004?-- I don't recall doing it then. I don't recall actually looking for it until around this time, around April.

1

It is not the case that after receiving her complaint in October 2004, that some date after that you destroyed the document you had received in March 2004?-- No, that's not the case.

10

Because of concerns that you'd failed to take appropriate action in relation to that document at that time?-- No, that's not the case.

Could I just ask you to have a look at a document you looked at earlier - I hope it is still available - it was SPB14, which is the exhibit to statement of Dr Baker. Do you recall it was an email from Leonie Raven in relation to the self-assessment that had been completed by Drs Baker and Carter, which were, of course, critical of management. If we could just scroll down? And, further, that appears to be a post-it note that's been photocopied at the same time as the email?-- Yes.

20

Is that - are you able to say whether that's your writing or do you recognise it as being the writing of another person?-- It is not my writing. I don't recognise whose writing it is.

Thank you. Just in relation to that email you sent on the 11th of April 2005 in relation to the document you received from Ms Hoffman in March 2004?-- Yes.

30

You mention that, in the last sentence or two, "I can't remember all the details in the note." And then "it was largely about personality conflict"?-- Yep.

Do you recall seeing - or receiving a document from Ms Hoffman on the 22nd of October 2004 which was actually a reproduction, to a very large extent, of the document you had received in March but with the addition of further specific facts regarding the patient Bramich?-- Yes, I remember that document.

40

So if we could see TH10 or the copy of it again, and perhaps a wider view. The evidence is that that document is actually one which was sent along with Ms Hoffman's letter on the 22nd of October 2004, and that the marking, by way of arrows from the heading down to another arrow, simply show that part of the document which comprised the document given to you in March 2004?-- Yes.

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But the actual document shown on the screen has the additional information at the bottom of that page?-- Yeah.

And then a second page?-- Yes.

So you would have recognised it at that time, would you not, in late October 2004, as including the contents of the

document you had been given in March 2004?-- It didn't spring to my mind, no. 1

Didn't recognise it?-- I didn't recognise it as that, no.

The subject matter didn't seem familiar?-- No.

All right. So you weren't meaning to be deliberately deceptive in your email of the 11th of April 2005 when you said, "I haven't got a copy of the document anymore and I can't recall really what was in it, but it was mainly personality issues."?-- No, that's right. 10

At the time you wrote that email, you are saying you hadn't realised that the document you'd received on the 22nd of October 2004, TH10, in fact included the document received in March being referred to in your email?-- No, I didn't realise that.

Now, in the document in March, Ms Hoffman referred to concerns regarding Dr Patel undertaking oesophagectomies as being outside the capability of the ICU?-- Yes. 20

Had you been made aware, prior to that time, that concerns had been raised with Dr Keating regarding oesophagectomies being undertaken at Bundaberg Base Hospital?-- No.

He had never spoken to you prior to March 2004 about the fact that he had had discussions with Dr Joiner?-- No. 30

On that topic?-- No.

Or with Toni Hoffman on that topic?-- No.

Had he ever raised at all with you, prior to March 2004, the issue as to whether oesophagectomies should be undertaken at Bundaberg Base Hospital?-- No.

When did you become aware of a patient undergoing an oesophagectomy in May 2003, undertaken by Dr Patel, and dying in the hospital?-- I don't recall. I don't----- 40

Did you become aware of it at any time prior to March 2004?-- The first time I had received any advice about that was with Toni Hoffman's letter of the 22nd of October.

And at no time before that?-- No.

Could we go back to that TH10? Concentrate on that part which formed the document you received in March 2004. So can we go up to the top, please? And further down. That last paragraph again: the concern regarding oesophagectomies or the fact that Ms Hoffman had accompanied Dr Joiner to meet with Dr Keating regarding oesophagectomies, you didn't realise at that time that that included concerns being raised in relation to an oesophagectomy after which a patient had died?-- No. 50

And you have already said that you - you spoke to Dr Keating

about the document, or the matters raised in it. You don't recall him indicating to you at that time that there had been an oesophagectomy where a patient had died?-- No.

1

Okay. So the first time you realised that is when you get - had the conversation with Toni Hoffman on the 20th of October 2004?-- Yes. I can't remember the details of that conversation, but, yes, I think that would be it.

And, likewise, prior to that time, that is around the 20th of October 2004, were you aware at all that Dr Patel had undertaken a second oesophagectomy in June 2003 following which the patient had had serious complications, including three returns to theatre and eventual transfer to Brisbane?-- I wasn't made aware of any of those issues until Toni Hoffman met with me and then her letter.

10

Would you expect, as a district manager, to have your Director of Medical Services alert you to such matters?-- The Director of Medical Services wouldn't usually discuss with me clinical issues. If he had particular concerns about the practice of a surgeon, then I would expect that he would talk to me about it.

20

Okay. But the first you hear then about the details of those oesophagectomies is when you receive that letter dated the 22nd of October 2004, or I should say, perhaps, in the meeting of the 20th of October 2004?-- Yes.

Now, you have been taken to the letter, and I won't do that in great detail.

30

COMMISSIONER: If you are moving on to something else, we might adjourn for lunch, Mr Allen. Adjourn till 2 o'clock.

THE COMMISSION ADJOURNED AT 12.59 P.M. TILL 2.00 P.M.

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THE COMMISSION RESUMED AT 2.00 P.M.

PETER NICKLIN LECK, CONTINUING CROSS-EXAMINATION:

COMMISSIONER: Mr Leck, could you lean forward when you are speaking a bit more? There is difficulty in hearing through the microphone. Not in here, but elsewhere?-- Right.

10

Thank you.

MR ALLEN: Mr Leck, after you had received the letter from Toni Hoffman, dated the 22nd of October 2004, you were aware that there was a patient would had undergone an oesophagectomy by Dr Patel in May 2003 who had died in the intensive care unit at Bundaberg after that operation?-- I can't recall the detail but there were patients that had undergone oesophagectomies, yes.

20

Okay. Just so that you are aware of the detail that's being asked about, I will ask you to have a look at TH37. There was reference there, as you see, to a patient identified by UR number who had gone to the ICU post oesophagectomy?-- Yes.

Been described by Dr Patel as stable despite requiring aggressive adrenaline and oxygen therapy?-- Yes.

30

And had, indeed, died?-- Yes.

All right. And in that context there was reference by Ms Hoffman to going with Dr Joiner to see Dr Keating to voice concerns?-- Yes.

About whether the ICU could offer adequate postoperative care for oesophagectomies?-- Yes.

40

And reference to some literature on that topic?-- Yes.

And then you will see, after the highlighted section, the words "this incident was repeated relatively soon after the first", after the reference to "Peter Leck and Darren Keating and care for his own patients"?-- Yes.

This incident was repeated relatively soon after the first?-- Yes.

50

Did you understand that to be a reference to another oesophagectomy?-- I - I don't recall spending time thinking about what that was.

Well, if you go over the page, you will see there that there is some details given in relation to another patient by UR number and some dates in June 2003 regarding an oesophagectomy, a wound dehiscence, a second wound dehiscence,

a third wound dehiscence and eventual transfer to Brisbane?--  
Yes.

1

And an allegation that Dr Patel had approached Dr Keating in  
relation to delaying the transfer of that patient?-- Yes.

And also that doctors at the Royal Brisbane Hospital  
questioned why such surgery was being undertaken at  
Bundaberg?-- Yes.

10

By the way, were you aware of communication from Dr Peter Cook  
in the middle of 2003 raising that issue with Dr Keating?--  
Not that I recall, no.

And then you will see the next paragraph, another patient by  
UR number, post-op oesophagectomy, ventilated for 302 hours?--  
Yes.

That's in reference to a patient who underwent an  
oesophagectomy in December of 2003 and obviously suffered an  
intensive or prolonged stay in the ICU, including  
ventilation?-- Yes.

20

So it would have been apparent to you, at least from the time  
you received that letter dated 22 October 2004, that  
Ms Hoffman had raised concerns regarding the appropriateness  
of oesophagectomies being undertaken at the Bundaberg  
Hospital?-- Yes.

Apparently those concerns were being shared by  
Dr Joiner-----?-- Yes.

30

-----to the extent that the matter had been raised with  
Dr Keating?-- Yes.

And that in relation to the three oesophagectomy patients  
referred to, one had died soon after the operation and the  
other two had suffered either serious complications or a  
prolonged, extended ICU stay?-- Yes.

40

Now, those matters must have raised very serious concern in  
your mind as to whether or not, in fact, Dr Patel should be  
continued to be permitted to undertake oesophagectomies at  
Bundaberg?-- It did raise that concern for me, yes.

Did you discuss that with Dr Keating after receiving that  
letter and forming that concern in your own mind?-- Yes, I  
believe I did. I can't recall - I can't recall the  
conversation but I recall - the details of the conversation,  
but I recall having those concerns and raising them, and he  
didn't share those concerns. And it led to me speaking to  
Dr - when I spoke to Dr Mark Mattiussi to look for somebody to  
conduct an investigation, at the same time I spoke to him  
about oesophagectomies and a Whipples procedure being done in  
Bundaberg and asked him whether it was appropriate for those  
procedures to be done there. He indicated to me that he  
didn't think there was a concern with the oesophagectomies but  
he had a concern that a Whipples would be done at Bundaberg.

50

This conversation with Dr Mattiussi occurred in December 2004, did it?-- I think it was late November. 1

Late November, all right. And do you claim a specific recollection that oesophagectomies were discussed with Dr Mattiussi during that conversation?-- Yes.

And Whipples procedures?-- Yes. 10

And do you claim a definite recollection that Dr Mattiussi expressed an opinion that it was, in his view, all right for oesophagectomies to be performed?-- That was the intent of what he said, yes.

No, do you claim a recollection that he expressed a view as to whether it was appropriate that oesophagectomies be performed at Bundaberg?-- I can't remember his precise words but it was he thought - it was along the lines he thought that was okay. 20

Did he use the word "oesophagectomy" at any stage in the conversation?-- I am not sure that he did, but I did. I was asking the question.

Could it be?-- Oh, yes - yeah, I think he did use oesophagectomies, yes.

Did he express the view that Whipples procedures should not be undertaken at that hospital?-- Yes, he indicated he did not believe they should be done there. 30

Did you, therefore, take some steps to direct that Dr Patel's practice should be curtailed in relation to Whipples procedures?-- No, I didn't.

Why not?-- I don't - you know, I don't know other than that Whipples would be a very - I wouldn't have expected a Whipples to be done frequently anyway, I wouldn't have expected that to be happening. I just didn't think to do that. 40

For all you knew there could be a patient the next day booked for a Whipples procedure?-- I didn't know.

Or in the following four months?-- I didn't know.

No. Did you make any inquiries?-- No.

Did you raise that matter with Dr Keating?-- I can't recall whether I raised it with Dr Keating or not. 50

But there had been serious concerns raised about Dr Patel operating outside the scope of practice of the hospital and you say that Dr Mattiussi has confirmed that Whipples procedure should not be undertaken at the hospital. Why would you not take some action to at least raise that with the Director of Medical Services?-- I can't recall whether I did or not.

You had no serious - you gave no serious consideration to curbing or constraining Dr Patel's scope of practice in October 2004, did you?-- Not in October 2004. That was later.

1

And-----

COMMISSIONER: Well, not in late November when you were talking to Dr Mattiussi?-- No.

10

MR ALLEN: Well, not at any time, in fact, until - well, not at any time, including up to the time that Dr Keating told you that he'd made a direction that Dr Patel not undertake any further oesophagectomies?-- My recollection is that Dr Keating advised that he told Dr Patel not to undertake any elective intensive care work and I confirmed that with Dr Patel on the 13th of January.

Prior to that time, though, in late December, did Dr Keating inform you that he'd told Dr Patel that he was not to undertake any further oesophagectomies?-- I am sorry, prior to?

20

Yes, prior to 13th of January, and, indeed, in late December 2004, did Dr Keating tell you that he'd directed Dr Patel not to undertake any further oesophagectomies?-- He told me in January prior to the meeting - some days prior to the meeting with Dr Patel that he had told him - told Dr Patel prior to Christmas that he wasn't to undertake elective intensive - elective surgery that would result in intensive care, including oesophagectomies.

30

And that was only following the death of Mr Kemps?-- I am - yes, it was, although I wasn't - I don't recall being given a reason as to why Darren had come to that decision.

You would have been able to put two and two together yourself, wouldn't you, having been informed of the case of Mr Kemps by an email from the night manager?-- It - it just wasn't something that - that I recall crossing my mind. I mean, I just don't recall - I don't recall the reasons why Darren had decided to make that decision.

40

You've been asked to look yesterday at an email that you sent to Dr Keating, referring to or forwarding a report from the night manager?-- Yes.

50

Referring to the fact that a patient, who had undergone an oesophagectomy, was not expected to live?-- Yes.

Indeed, at the time you sent that E-mail to Dr Keating, that patient, Mr Kemps, had already died. Did you know that?-- No.

That was the E-mail where you said that, "This oesophagectomy concerns me. How many of these patients lived?", or, "survived?"?-- Yes.

And you are saying that you didn't then follow up to find out what the result was for that patient?-- I don't recall a conversation about it. I would have expected that I would have, but I just don't recall it.

But you didn't, according to your evidence yesterday, actually follow up Dr Keating for an answer to your question in the E-mail; that is, as to how many oesophagectomy patients had actually survived?-- I don't recall having spoken to him about that or receiving any information about that, no.

Prior to that patient undergoing an oesophagectomy on 20 December 2004, you had raised with Dr Keating the question whether oesophagectomies should continue?-- Sorry-----

You had raised with Dr Keating the question as to whether oesophagectomies could be performed?-- Yes.

And you say that you had also discussed that with Dr Mattiussi?-- That's correct.

And on the basis of those conversations, you didn't see any room for yourself, as District Manager, to make any direction that they shouldn't continue?-- No. Well, when I spoke to Mark Mattiussi, it seemed to confirm for me that Darren's views were correct, in that he wasn't concerned and neither was Mark.

Even after you had received that E-mail in relation to the oesophagectomy on 20 December 2004, you didn't then again raise with Dr Keating the question as to whether oesophagectomies should be performed at Bundaberg?-- I don't recall raising that with him, no.

If I could just ask you about a couple of things that you have spoken about in your interview with counsel assisting? At the bottom of page 15 of the transcript I have - and it is the most recent revision - I withdraw that. Could we just go to page 14, to the first answer by yourself? You say, "I spoke to Dr Keating about this scope of what was included in the letter from Toni Hoffman and specifically raised the issue of oesophagectomies. Dr Keating indicated that he had no concern in relation to those procedures being performed and reiterated his view that this related to a personality conflict." Is that so?-- Yeah, my recollection now is not as clear as it seems to have been then, but I - in terms of some of that



detail - but I recall raising the issue with him.

1

And you are obviously talking about a conversation which occurs between 22 October 2004 and the 20th of December 2004?-- Yes.

And you then go on to talk about speaking to Dr Mattiussi, and you say - raising the issue of oesophagectomies and Whipple's with him-----?-- Yes.

10

-----you say, "Dr Mattiussi indicated that he didn't believe a Whipple's should be done up there, but he didn't actually say anything which raised concerns about it - oesophagectomies being done - and it appeared his view was consistent with Dr Keating's.", end quote?-- Yes.

Could it be the case that whilst Dr Mattiussi made a specific reference to Whipple's, he didn't actually say anything about oesophagectomies in that conversation?-- No, I recall raising oesophagectomies with him.

20

All right. If we then go to the bottom of page 15, you will see that there's a question there asked by Senior Counsel Assisting: "Were you aware that Dr Patel was not supervised by a specialist surgeon?"-- Sorry, where-----

Bottom of page 15 of the transcript?-- Sorry. Yes.

And your answer over the page is, "No."?-- Yes.

30

That's not a correct answer, is it?-- Not from my recollection now. I now believe that he was not supervised by a specialist surgeon.

But during the whole time that he was at Bundaberg Base Hospital, you were aware that he wasn't supervised by any specialist surgeon, surely?-- Yes, I think that's correct. I didn't have the same recollection, obviously, in that meeting.

Well, to be fair to you, perhaps you were meaning to convey agreement that you were aware that Dr Patel was not supervised by a specialist surgeon?-- I'm not sure.

40

Leave aside what was said in the interview, throughout the whole time that Dr Patel was Director of Surgery, you were aware that he wasn't being supervised by any specialist surgeon?-- It wasn't something that I had specifically considered until this process, and I had no recollection that he was being supervised. Through this process, it has become evident that he wasn't.

50

COMMISSIONER: But there was no-one to supervise him, was there?-- No.

You knew that. You knew there was no-one at Bundaberg Hospital to supervise Dr Patel at any stage when you were there - when he was there?-- Well, I now accept that, yes. It is not something I had thought about.

No, but if you had thought about it, you would have realised it immediately. You knew who the doctors were at the hospital?-- Yes.

You knew that there was not a surgeon - a specialist surgeon capable of supervising Dr Patel?-- Yes.

MR ALLEN: And towards the bottom of page 21 of the transcript of the interview, you indicate that you never discussed with Dr Keating that, in the context of credentialling, there was no-one who was supervising Dr Patel?-- No.

And that Dr Keating never raised it as an issue of concern that the new Director of Surgery was not supervised?-- No, that's right.

Were you aware that Dr Patel had been registered by the Medical Board upon information being given to them that Dr Patel, as a Senior Medical Officer, would be supervised by a Director of Surgery?-- No, I wasn't aware of that.

When did you become aware that Dr Patel was, in fact, the Director of Surgery?-- I believe I knew that at the time he started.

Because he went into that position virtually immediately upon starting at the hospital?-- Yes.

And you knew from that time that he was basically the head surgeon?-- Yes, as I said before, though, the title of Director of Surgery, or that component of the position which is the director position is - I had viewed as more of an administrative role.

But you knew that he was in that role from, basically, the time he commenced at the hospital?-- I hadn't initially recalled that, but I do recall that now, yes.

Because the next question you were asked in the interview was, "Did either Dr Keating or Dr Nydam ever raise the view that there was an intention to promote the SMO, Dr Patel, to Director of Surgery?", and your answer in June this year was, "I don't recall anything until late 2003."?-- That's right.

Well, that's wrong, isn't it?-- Yes, in the process of looking through material and so forth in this, I recognised that, in fact, I had been aware, but at that time, I didn't recall it.

What sort of discussions with Dr Keating or Dr Nydam had you recalled occurring in late 2003?-- There was a - it was with Dr Keating. There was a discussion around - that Dr Patel was enthusiastic, that he was assisting with elective surgery targets, and that sort of thing. I don't now know what the reason is for that conversation, and at the time I thought it related to making him the Director of Surgery, but I must be incorrect.

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Could I just ask you to have a look at Exhibit 186? I'll give you a copy of the first page of that Exhibit on the overhead. I really just want to know whether you are familiar with the type of document and whether it is something that you would have ordinarily considered in the course of your duties?-- Not for - yes, I'm familiar with the document, but the individual Cost Centre Reports I didn't see. They were things that went from the department head to the relevant executive director, such as the Director of Nursing, Director of Medical Services and so forth.

In relation to the Cost Centre Reports for the Intensive Care Unit, you wouldn't have actually seen those documents?-- No.

20  
I'll ask for that back, thanks. Now, you, of course, indicated when you spoke to persons in Dr Fitzgerald's office that Dr Patel was an important benefit to the hospital and that you were concerned that his services not be lost as a result of the investigation?-- Not with anyone from Dr Fitzgerald's office. I think you are referring to the discussion with Rebecca McMahon from Audit.

30  
From Audit. Excuse me. Indeed, your eagerness to keep the services of Dr Patel continued throughout the following period, up until the very date that he ceased employment at the hospital?-- No, I wouldn't describe myself as eager. I just wanted a fair process to occur - to take place - a fair investigation.

30  
You were asked about the letter to the Editor that you sent to the Bundaberg Newsmail on the 23rd of March 2005?-- Yes.

40  
Wasn't the very reason that you sent that letter because you were hoping that by doing so, you would keep the services of Dr Patel in the future?-- No. The reason I sent the letter was that publicity had occurred without the completion of a - an investigation process, and I didn't consider that to be fair.

40  
You wanted to keep him at least working as a surgeon from the date that you sent that letter - at least up until the 31st of March?-- Yes. I mean, any immediate departure was going to cause us problems in terms of maintaining a service.

And that was the reason why you sent the letter, wasn't it?-- No.

50  
Well, it was pursuant to a demand by Dr Patel that such a letter be sent or he would resign?-- He had asked for support and I was prepared to provide support to the extent of saying that he was entitled to a fair go.

No, he'd asked for a letter of support?-- I think he'd asked for public support, but I can't recall exactly.

He'd asked for a letter of support to be sent to the local newspaper, or he would resign; that's so, isn't it?-- We just

had it up - I can't recall that it said exactly what it said, but my intent with that letter, as I've said before, was to demonstrate that I thought a fair go was appropriate and that publicity in the way it had occurred was, you know, very unfortunate.

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COMMISSIONER: But the logic of this is obvious, Mr Leck, isn't it? Dr Patel says to you, "Unless you send a letter of support to the Bundaberg Newsmail in relation to my work, I will resign." That appears plain from that document, doesn't it - the first line?-- Yes.

10

That's what he said, isn't it - something like that?-- Yes.

And you sent a letter of support to the Bundaberg Newsmail?-- He had asked for a letter supporting his work. I provided a letter saying that he was entitled to natural justice.

All right.

20

MR ALLEN: The reason why you sent the letter was because he had demanded such a letter be sent to that newspaper or he would resign?-- I don't recall him saying that he would resign at that point.

Can you read the second paragraph of your E-mail?-- Oh, yes, okay. Yep.

So, you sent the letter to the Editor because of Dr Patel's demand that such a letter be sent or he would resign?-- Yes, that was part of what I was doing, yes.

30

You were prepared to send a letter in those terms if it might assist in keeping Dr Patel's services as Director of Surgery?-- As I indicated before, his immediate departure would have been a problem because we would have had no - we would have known in the event we had no service.

You were taken to an E-mail whereby you indicate to the Zonal Manager on 24 March 2005 that Dr Patel has just resigned, effective immediately?-- Yes.

40

But even as at 1 April 2004 - excuse me, 2005 - you were still holding out some hope that Dr Patel would take up a new contract from that date?-- I thought it was possible that he would. As I said before, the - his departure would have caused - and did cause a problem for us in terms of maintaining a service. So, whilst I was happy to see him leave on one hand, on the other hand, you know, we had no service to provide - or a limited service to provide to the community.

50

So, you weren't happy to see him leave, were you?-- Well, I was in two minds.

Would you have a look at MDG 40, which is the exhibit to Mr Demy-Geroe's affidavit? You spoke to Duncan Hill of the - a registration officer on the 30th of March 2005?-- Yes.

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And you indicated that unless Dr Patel put something in writing to the District, or until it was 1 April 2005, that you would be unable to send something in writing to the Board?-- That's right.

10  
So, at that stage, you were still uncertain as to whether he would take up the offer for the new contract starting 1 April 2005?-- He had said he was resigning and then he indicated that he was considering it, and then he didn't.

So, you were, in your conversations with Dr Patel, quite clearly leaving open the option for him to commence a new contract that would be for three months from the 1st of April 2005?-- Yes.

20  
And another document, part of the same exhibit, MDG40, is a file note of some conversations on the 1st of April 2005. It seems that Sue, from Medical Administration at the hospital, phones the Board in the morning, trying to find out if Dr Patel's registration had been renewed?-- Right.

Did you ask someone in administration to contact the Board to see if his registration had been renewed?-- No.

30  
Are you able to enlighten us as to why someone in administration would be doing that?-- Sue works in - as part of the clerical support team for the Director of Medical Services, so I'd imagine that because there had been an offer made from the 1st of April onwards, that she was checking to see if he was registered, but I don't know - I don't know about the - this at all.

Okay. But on the same date, Mr Hill's transferred to yourself, and you tell him that you don't have any further news or anything written from Dr Patel, and you don't know whether he's decided to accept the new contract?-- Yes.

40  
So, even at that time, on the morning of 1 April 2005, you are still holding out some hope that he might take up the three month contract?-- I don't think I knew what he was doing.

But the offer was still there, still open if he wished to take it?-- Yes.

And at 11 a.m., when you ring Mr Hill back, you are saying that Dr Patel still can't make up his mind whether to accept the position or not?-----

COMMISSIONER: Dr Hill rang back.

MR ALLEN: Excuse me, Mr Hill rang you at 11?-- Yes, I remember him ringing.

And you were still holding out the hope that although Dr Patel had left his office with the intention not to accept the position, he would probably change his mind?-- I don't recall saying that, but obviously he was - he had both resigned and

said he was considering it, so I didn't know what was happening.

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And as a final sentence of that file note correctly states the position as you communicated it to Mr Hill on 1 April 2005 - that it depended on Dr Patel's decision to accept the contract as to whether there was a position or not?-- Yes.

Thank you. You gave some evidence yesterday morning that it was expected of you in your position to discourage staff from going to the press?-- Yes.

10

I suppose that comment would equally apply to staff leaking information to a Member of Parliament?-- Yes.

It would have been expected of you to discourage staff from doing so?-- Actually, what had been - I mean, yes, that was my interpretation, although I had heard it said that Queensland Health would not - you know, that people could see their Members of Parliament. There had been some discussion about that. Look, I just can't remember the details. I vaguely remember something along those lines.

20

When you addressed Intensive Care Unit nurses on the 23rd of March 2005, you had a suspicion that one of those nurses had leaked information to - well, indeed, Ms Hoffman's letter of 22 October 2004 to the Member for Burnett?-- Yes. Dr Martin Strahan had been and seen me and indicated that the Member for Burnett had been in contact with him a couple of days prior to this and had indicated that a nurse had provided him with some information. Dr Strahan said that he advised Mr Messenger that he shouldn't take it anywhere and Dr Strahan came to me to advise me that no doctor would have done this sort of thing.

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You are aware, of course, that on the 22nd of March 2005, there were statements made in Parliament about the matter?-- Yes.

And the letter was tabled?-- Yes.

40

And then, of course, there was media publicity on the morning of 23 March 2005?-- I think that's right, yes.

And after your conversation with Dr Strahan, you had a strong suspicion that that was a nurse that had given such information to the Member of Parliament?-- Yes.

50

And you were very angry about that, weren't you?-- I wasn't happy about it but I wasn't angry about it and I certainly did not display any anger when I later spoke to staff.

1

You appeared furious I suggest?-- No, I disagree with that.

You appeared agitated?-- No, I was very collected. I was there for a brief period of time. I had a message to provide in relation to the - our organisational values and that's what I did.

10

I suggest that you initially wouldn't sit down at the meeting?-- I don't recall whether I was sitting down or standing up.

You wouldn't make eye contact with the people at the meeting?-- No, I was - that's not the case.

When you did sit down you sat well away from the other people at the meeting?-- No, I don't recall that being the case.

20

Did you say that you had it from very high or good sources that the information given to the member of parliament had come from a member of the ICU staff?-- I recall indicating that - that I believed that there was - that I had information leading me to believe that a nurse had provided this information and I'm not sure I said specifically about ICU.

Did you say something along the lines of, "I have good information as to who this person is"?-- No.

30

Did you continually say that you were appalled by the release of that information?-- No, I don't recall continually saying that I was appalled.

That you were appalled that such a senior surgeon of the hospital could be treated in such a way?-- No, I don't recall that. I remember talking about natural justice and I remember talking about our organisational values in terms of performance accountability and that Dr Patel was going through an accountability process.

40

Did you say that the release of the information in the letter was a breach of confidentiality?-- I may have said that. I don't recall.

Did you say that it was a breach of the Queensland Health Code of Conduct?-- No, I don't recall saying - saying that but I had attended - there were two meetings and I attended both of them with Deanne or Dianne Walls and she was to talk about the Code of Conduct.

50

Well, I suggest that at the meeting with the ICU nurses you said that it was against the Code of Conduct to leak documents?-- I don't recall saying that but I may have.

You said that staff could lose their jobs for breaching the Code of Conduct?-- No, I don't recall saying that.

I suggest that you held up a document saying that if nurses breach confidentiality, their jobs were on the line?-- No, I had no documents with me aside from a copy of some of the organisational values which I'd put in my pocket as a reminder.

I suggest that you conveyed to the persons at the meeting that such behaviour could lead to dismissal-----?-- No.

-----of a person who did such?-- I don't recall saying that, no.

Do you recall whether you made any reference to the possibility that penalties of imprisonment can follow from breaching patient confidentiality?-- No.

There's reference in the standard employment letters to releasing information possibly constituting an offence?-- No, my - my role was in the beginning of the meeting. I was at each one for about five minutes. I didn't talk about the Code of Conduct that I was - recall. I was talking about organisational values.

Well, I put it to you quite clearly you, during this meeting, referred to the Code of Conduct?-- No, I don't recall that I did, no.

And you referred to the prospect of nurses losing their jobs-----?-- No.

-----for breaching such a Code of Conduct?-- No.

Did you tell the nurses that they had created division between doctors and nurses that would never be mended?-- I may have talked about - I talked about teamwork in relation to one of our organisational - being one of our organisational values and I may have talked about the divide that such - what had occurred could result in.

Did you say that they had brought shame upon the ICU?-- No.

Did you say that intensive care nurses would be viewed in a different light by the general public and other health practitioners?-- No.

Did you say that the person responsible cannot be trusted?-- No, I don't recall saying that.

Were you then present at a subsequent meeting on the 7th of April 2005 that was attended by the Director-General and the Minister for Health?-- Yes.

Did the Minister express displeasure as to the situation that had arisen in Bundaberg?-- Yes. I believe he did. I don't have a really good recollection of the meeting now but I believe he - I think he did express displeasure, yes.



And the Director-General expressed displeasure?-- The only recollection I really had was following my e-mail in relation to that event when I e-mailed Dan Bergin and the Director-General had indicated that there would not be a witch-hunt and that we needed to move on.

1

Did the Director-General indicate that there wouldn't be any release of Dr FitzGerald's report?-- Yes, he did.

Do you remember whether the Director-General said why that would be?-- He indicated that was because the process couldn't be completed.

10

Did either the Director-General or the minute indicate that the report was not yet available?-- I can't recall them mentioning the report.

It hadn't been made available to you at that date, had it?-- No. The report was made available to me by Gerry Fitzgerald when he visited. I can't remember exactly when that - that was after that I think.

20

After that meeting, yes. Do you recall the clear impression being given by the Minister and/or the Director-General that the investigation basically could not continue because Dr Patel had left the country?-- I don't recall them being - no, I don't recall that.

You certainly didn't have any understanding that there would be any further investigation at that point?-- I thought the process had ceased, yes.

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Yes. And you weren't expecting, for example, that there would be a further process such as that announced on the 9th of April whereby there was going to be another team appointed to investigate matters?-- I wasn't aware of that at that time, no.

No. Yes, thank you. Thank you, Commissioner.

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COMMISSIONER: Thank you. Who is next, Mr Mullins?

CROSS-EXAMINATION:

MR MULLINS: Mr Leck?-- Yes.

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My name is Mullins. I represent the patients. Just a few matters. Your curriculum vitae indicates that you have been in hospital management for almost 20 years?-- Yes.

You started off in New South Wales?-- That's correct.

Moved to Mount Isa in the mid-1990s?-- Yes.

And-----?-- Early 1990s.

1

You had about 10 years in Mount Isa?-- Five, five and a half.

You had a short stint in Townsville you said yesterday?--  
Yes, several months.

What was - doing what?-- I relieved the Assistant Regional  
Director for a period.

10

The assistant?-- One of the assistant regional directors.

Would that be a step up from the position of District  
Manager?-- Yes.

Would the Assistant Regional Director assist in the management  
of the zone?-- Of the region as it was in those days, yes.

Now, you are relatively familiar then with general clinical  
issues?-- Yes.

20

Having worked in a hospital for almost 20 years?-- Yes.

You understand most of the terminology?-- I understand a  
reasonable amount.

You have got Internet skills?-- My - yeah, they're okay.

If you came across a type of procedure like an oesophagectomy,  
you could tap into Google and find out what it was about?-- I  
wouldn't have thought to do that.

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Well, how would you access some information about a procedure  
like that?-- I wouldn't - I mean, I wouldn't be seeking  
information about clinical procedures. Usually if I had to  
learn about it, I would be taught - you know, it would arise  
in the course of a conversation in a meeting or something of  
that nature.

All right. Now, you said yesterday that you delegated the  
responsibility for credentialing and privileging to  
Dr Keating?-- Yes.

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You accept that ultimately the responsibility for  
credentialing and privileging rests with the District  
Manager?-- Yes.

And you mention that when you delegated this responsibility to  
Dr Keating, that you did not do so in writing?-- Yes.

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So there is no document in existence that records exactly what  
it was that you said he had to do?-- No.

You just conveyed to him orally that you wanted him to look  
after I think you described it as a clinical governance  
issues?-- Yes, and also we talked specifically about  
privileging and credentialing.

The privileging and credentialing was an issue that was discussed within the zone at District Manager level?-- I don't recall it being discussed.

1

We've heard some evidence from Dan Bergin that at the zone meeting of District Managers at about the time of the tilt train disaster that there was a discussion about credentialing - privileging and credentialing but you weren't present at that meeting?-- I wasn't there, no. I had left that morning.

10

Did you ever, after that time, discover or find out about the topic that was discussed and what information was imparted?-- No.

Did you seek to find out from Dan Bergin what other topics were canvassed in your absence?-- No, but I had spoken to the District Manager from Rockhampton and asked her to - or she actually said to me when I was leaving that she would let me know if there were any significant issues that were raised and I recall giving her a call at some point but I don't think there was anything that was significant raised.

20

The process of credentialing and privileging involves at least three aspects, doesn't it? The first is the doctor's credentials, establishing those?-- Yes.

The second is establishing the procedures that the doctor is capable of performing?-- Yes.

30

And the third is looking at the capacity of the hospital to determine what backup is available and what the doctor can perform in the context of the hospital setting?-- Yes.

In respect to that third issue, the sorts of issues that arise are the hospital's rating within Queensland Health; would that be correct?-- There's a role delineation process, so, yes - it's pretty broad but, yes, it gives a broad guideline.

The role delineation process, is that a Queensland Health process or policy?-- Yes, it is.

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Where would one find that?-- It had recently been changed to Service Capability Framework but it was essentially the same thing. It was a document sent out - the original role delineation document I think was drawn up in the days of the regions. There may have been one or two updates of those. The Service Capability Framework had been put together by Corporate Office with some advice from the zones and they had been forwarded out as well.

50

Did the role delineation look at the individual hospital or discrete components of the hospital, for example the ICU?-- Yes, it covered a variety of different services.

So it covered both of those, both what the ICU in a particular hospital could do and what the hospital in toto could do?-- Yes.

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 What about a policy on patient transfer, would that be relevant to the capacity of the hospital?-- It could be, yes.

Was there a policy at the Bundaberg Hospital or a Queensland Health policy that dealt with the circumstances under which a patient should be transferred to a tertiary hospital?-- Not that I recall. There were some documents - there were some documents of - around transfers but I can't recall the content of them. 10

Do you accept that some of these issues that relate to credentialing and privileging don't involve strictly medical matters?-- Yes.

Now, you've already acknowledged that the District Manager had the ultimate decision making power or responsibility in respect of credentialing and privileging. Is it the case that most District Managers were not clinicians?-- I would think that's the case. There's - they have a variety of backgrounds. I'm not sure whether it would be true that it's most - there are a variety of people with either administrative - from administrative backgrounds, nursing backgrounds, medical backgrounds. 20

It's the case that the District Manager had the responsibility to make the ultimate credentialing and privileging decision on advice from the committee?-- Yes.

And the committee would be comprised of at least one clinician?-- Well, the committee would be made up of clinicians. It wouldn't have people on it who weren't clinicians other than, say, the Director of Medical Services who has a medical background but is not working clinically. 30

Or possibly the District Manager?-- Not on the committee, no.

What training or information did you give to Dr Keating at the time that he commenced his employment?-- I don't recall that there was any specific training provided to him. We had a - or have had an orientation program and I encouraged him to attend that, although it was - it's more - it's broad. It's not specific to the role of a Director of Medical Services and I'm not sure whether he ended up attending that. 40

Can I put to you what his evidence on the issue was?-- Sure.

He said he arrived on 14 April 2003. That's consistent with your recollection?-- Yes. 50

He came on the 9 o'clock plane, was picked up by you and was at a meeting by 9.30?-- I don't recall but that could well be the case.

He said in respect of complaints procedures, he was not given the total procedure. He was quickly given a number of ministerials and he asked one of the secretaries what the expectation was and subsequently confirmed that with you and

started working on the outstanding ministerials. Do you have any knowledge of that?-- No.

1

Did you do anything yourself to familiarise him with, for example, the complaints and adverse events policy?-- As best I can recall there was a series of policy files in - well, there were a series of policy files in executive offices. I recall that I indicated that they were there so that he could make his way through them and there were other documents like the role delineation document and planning documents and so forth.

10

Did you take him through those so that you knew that he was fully apprised of his responsibilities in the credentialing and privileging process?-- No, I don't recall doing it.

Did you tell him that the credentialing and privileging process had fallen away in 2002?-- I had - I indicated to him early in the piece that I wanted one of his priorities to be re-establishing the credentials and privileging committee, yes.

20

Now, Mr Allen has taken you through the - some of the letters from Toni Hoffman and I don't intend to do that with you again but I want to raise with you the letter that you received in about February/March of 2004?-- Yes.

Which was the one that there's some discussion about whether it was destroyed or not destroyed. Do you know the letter I'm talking about?-- Yes.

30

Now, that letter raised three issues. I might just put it on the overhead. It's TH10. If you just move that to the side; there is a note on there of mine. The first is, "Designated level one unit, capable of ventilation for short periods of time and consistently exceeds this." That was an issue raised by Toni Hoffman in respect of Dr Patel?-- Yes.

The second was he stated to one of the RNs that he had contacts in Brisbane and would use them to block a patient being transferred. That's another issue that she raised?-- Yes.

40

And the third was that Dr Carter, who was usually supportive and pro-active about transferring patients, wasn't so helpful where Dr Patel was concerned?-- Yes.

Or Dr Patel's patients, I'm sorry, was concerned. At least two of those three issues, if not all three, are classic credentialing and privileging issues, aren't they?-- Certainly the one about being a designated level 1 unit would be an issue in relation to credentialing. I don't see that the other two would be.

50

At this point in time you knew that Dr Patel hadn't been credentialed and privileged?-- Yes.

It had been 12 months?-- Yes.

1  
It had been 12 months or just under 12 months since Dr Keating had arrived?-- Yes.

You knew that he was struggling to put the credentialing and privileging process in place?-- We had talked about that, yes.

10  
There was one formal process that you had available to you that could to some extent restrict Dr Patel and that was to have him credentialed and privileged, wasn't it?-- Yes, and as I said the other day, we were working on getting the credentialing and privileging sorted - sorted out. It - whether or not it would have changed anything in terms of his appointment, I don't know.

20  
You told Dr Nothling - or I should ask you first. Mr Andrews asked you yesterday or put to you yesterday that you said to Dr Nothling that you believed an effective credentialing and process would have revealed the problems. Do you deny you told Dr Nothling that?-- I said something along those lines to Dr Nothling. As I said yesterday, I was very despondent about what had occurred and my experience had been that credentialing and privileging committees weren't effective but, yes, I was despondent about it.

Well, did you say that to Dr Nothling?-- No, I don't think I did.

30  
You see, you also said yesterday that credentialing and privileging used to be done by the selection committee?-- Yes.

And if we take an example of a selection committee, for example the one that considered Dr Jayasekera in late 2002, that comprised Dr Anderson?-- Yes.

Yourself and Dr Kees Nydam?-- Yes.

40  
Now, you could have appointed a credentialing and privileging committee in that form to credential and privilege Dr Patel, couldn't you?-- Yes, we could have, yes.

You could have called in Dr Anderson, sat on the committee yourself with Dr Keating and made a decision about whether the ICU had the capacity to handle this surgery. That's correct?-- We could have done that but I explained yesterday my concerns about the previous processes.

50  
But wouldn't the benefit of that have been that an independent person could come in from outside who was also a surgeon who could give their input into what was the appropriate surgery to be conducted at the hospital, both from the consideration of the surgeon in question and the capacity of the hospital?-- I'm not sure that I quite understand your question but, yes, normally there would be a surgeon on the credentialing committee. The concern that we had was about trying to improve the - that process by having somebody who was more

independent involved.

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COMMISSIONER: That took over two years, you still didn't have that system up and running, did you?-- No.

And it never occurred to you at any time in that interim period of two years that some interim credentialing and privileging committee would have been better than having none at all?-- No, I didn't think about that.

10

MR MULLINS: Did you think, though, when you got Toni Hoffman's letter, even though she asked you not to do anything formal about it, that the one thing that was open to you was to credential and privilege? Was there anything else you could do if you weren't going to go through a formal process?-- No, I didn't think about that. The - Toni hadn't wanted me to take it anywhere and Darren was of the view it was part of a personality conflict.

All right. The appointment of Dr Jayasekera, now, you explained yesterday that Dr Jayasekera, in late November 2002, was employed at the hospital?-- Yes.

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Was a fully qualified Australian surgeon?-- Yes.

He was a fellow of the Royal College of Surgeons?-- Yes.

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He met the selection criteria?-- Yes.

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And he wasn't offered the position of Director of Surgery?-- No.

Now, can you explain why, after the Yugoslavian had - or Dr Strekov had rejected the job, or not arrived, that you didn't offer the job to Dr Jayasekera?-- As I said yesterday, Kees Nydam didn't feel that it should be offered to him. He didn't go into any great detail about why that was the case but he didn't think he was suitable.

10

This, again, was your ultimate decision?-- Not in the case of a selection panel, no. It - it had to be a decision of the panel.

Doesn't the decision to hire and fire, or appoint someone to a position like the Director of Surgery, ultimately come back to the district manager?-- I am not sure exactly what you mean by that, but certainly we had processes in place for recruitment. So I don't oversee every recruitment process.

20

COMMISSIONER: It is your ultimate decision on the advice of the selection committee; is that not right?-- Yes.

So you are the man who finally decides?-- Yes.

MR MULLINS: You have explained to us that Kees Nydam was not keen or was not in favour of Dr Jayasekera taking the position. That's right?-- Yes.

30

And you accepted that advice and didn't offer the position to Dr Jayasekera?-- That's correct.

But you can't - well, do you say you simply can't recall the reasons that Dr Nydam gave you, or you just didn't ask him for reasons; he just wasn't keen for Dr Jayasekera to have the position?-- He said something along the lines of he didn't think that Dr Jayasekera was sufficiently experienced, but that was it. I don't recall any - any - any other comment.

40

You have managed dozens of surgeons as district manager in your career, hadn't you?-- Probably, quit a few, yes.

Dr Jayasekera was quite an experienced surgeon, wasn't he?-- I don't recall how many years he had been a fellow for but he was an experienced surgeon.

Even to offer him the position as a locum or temporary position was better than to import somebody from overseas who would have to go through a process with the Medical Board as an SMO?-- I think Dr Jayasekera was acting as the director there for a period. But we - I mean, obviously Kees and - we made a decision that he wasn't the best candidate for the job and we readvertised.

50

But when you readvertised you had no responses, did you?--



No, I don't think we did. Either that or there were no suitable applications.

1

So why didn't you offer him the job then?-- I am not sure. I do know that Dr Jayasekera was looking to move further south, but I can't recall the details.

Mr Allen pointed out that in your interview at page 15 that - this is from June of this year - that you indicated you didn't know that Dr Patel had been appointed Director of Surgery until late 2003?-- Yes.

10

But you corrected that and said you did know?-- Yes.

You also said yesterday that you believed the Director of Surgery position was largely an administrative role, not clinical?-- The Director of Surgery in a place like Bundaberg has an administrative component, but it is primarily a clinical role. So when we're talking about the Director of Surgery, I guess I am emphasising that that needs to be recognised.

20

The admin role needs to be recognised as being an additional component to the clinical role; that's correct?-- Yes.

But the Director of Surgery has some very important clinical roles, doesn't he, or she?-- I saw the Director of Surgery role as primarily being administrative.

Did you know that Dr Patel changed the audit system for surgery at the hospital?-- No, I wasn't aware that it was him. I do recall discussing with Dr Keating the Otago audit system and that it was ceased to be used, had stopped being used.

30

And Dr Patel was the one who changed the audit system?-- I wasn't aware of that at the time.

Would that have been within the responsibilities of the Director of Surgery?-- I would expect the Director of Surgery to ensure that there was an audit process in place.

40

Well, that's a very significant role - I suppose it is mixed clinical and admin, isn't it? It is not simply an admin role?-- No, that's right, but the director's role is to ensure that it is - the administrative role, I guess, is to ensure it is happening, as opposed to being a participant.

The supervision of the principal house officers or the junior medical officers within the hospital in the surgical department falls to the Director of Surgery?-- Yes, it does.

50

That's a very important clinical role?-- Yes.

You mentioned there are some teaching roles associated with the Director of Surgery?-- Again, my expectation would be that that role ensures that teaching takes place and certainly be involved themselves as well as ensure others were

delivering education.

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But most significantly the Director of Surgery wasn't supervised, was he?-- Well, not in terms of his clinical practice, no.

And the ordinary expectation would be that the Director of Surgery would not be supervised?-- Yes, that's right. There is an administrative supervision which would occur - which is undertaken by the Director of Medical Services, but not supervision in terms of clinical practice.

10

If he was appointed as an SMO, he would have been supervised, to some extent, wouldn't he?

COMMISSIONER: Or should have been?-- Perhaps he should have been.

There would have been no-one to supervise him if he had?-- No, that's right.

20

MR MULLINS: In your discussions with Dr Baker back in November 2001, your understanding was that if a person was appointed as an SMO they would be supervised by a specialist, whether it be a VMO or in-house specialist. Is that right?-- I am sorry, can you repeat that again?

In November 2001?-- Yes.

You had a discussion with Dr Sam Baker?-- Right.

30

About the appointment of - or his appointment into a position of Director of Surgery?-- Yes, I don't - I mean, I think this is the conversation we were discussing earlier. I don't know the date exactly but I would think it would be around then.

Was it your understanding at that time that if an SMO was brought into the hospital they would be supervised, by either a VMO or another specialist within the hospital?-- Yes, that would have been my expectation at that time.

40

All right. Now, between October 2004 when you received Toni Hoffman's letter and February 2005, you became aware of a number of events involving Dr Patel?-- There was - yes, there were a couple of events, yes.

Well, there was the letter of Toni Hoffman of October 2004?-- Yes.

You were aware, weren't you, of the Kemps matter?-- Well, yes, I was vaguely aware.

50

Were you aware of the Marilyn Daisy matter?-- Not that I recall.

You were aware of the 15 year old boy, patient P15?-- Yes.

At some point between October 2004 and February 2005 you took

over the running of the Bramich investigation?-- No.

1

You didn't?-- No.

Did at any time you say to Dr Keating, "I want to include this as part of the audit and you can effectively down tools on the Bramich investigation."?-- Yes. I think the Bramich matter had actually been raised in Toni Hoffman's letter and I'd spoken to the Director of Nursing, and Darren at some point had indicated to me that he didn't think the management of that patient was a problem, that it was okay, and Linda had indicated to me that the nursing staff were unlikely to be happy with that result and that they would not be satisfied by that conclusion by Dr Keating. So I asked him to cease his investigation and indicated it would be included in the investigation.

10

Did you see yourself as the main conduit for information between the hospital and Dr FitzGerald?-- No. The role of providing information was chiefly that of the Director of Medical Services and his secretary.

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Can I ask you to look at Exhibit 474? It is an email from you to Paul - his surname escapes me.

COMMISSIONER: Dall'Alba.

WITNESS: Paul Dall'Alba.

MR MULLINS: The last paragraph I am interested in. "Dan, I have found only one patient letter of complaint relating to Dr Patel - from a family whose father was treated mainly by another surgeon." Now, this was dated, this email - can we just scroll to the top - 23 March 2005, which was well after Dr FitzGerald had come up on 14 and 15 February?-- Yes.

30

Did you know of only one patient letter of complaint?-- I - yeah, I had no recollection at the time of patient complaints. Prior to Dr FitzGerald arriving I had gone through a file - a complaint file held in the central filing system and had not been able to locate anything in that relating to Dr Patel. I've since found out as part of this process that there had been several and the responses to those complaints were prepared by the Director of Medical Services and I would sign off on some of them.

40

Did Dr Keating ever tell you that there was only the one patient letter of complaint, which was the one described in your email?-- Did Dr Keating tell me that? No, I don't recall discussing that with Dr Keating, no.

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Did he ever tell you, "Look, there is a lot more complaints than one."?-- No.

When you say you checked - I think you said on a patient's register?-- Central filing system, complaints go into a - into that system and there would be many volumes of them there. And I checked the most current one.

And was that on a computer or-----?-- No, it was hard copy. 1

Did that identify a particular surgeon who might be involved in a complaint?-- They were copies of the - of - well, they - they could do. It would depend upon the nature of the complaint, what the complainant had said and the response. So usually it was a copy of the complaint and their response to the patient about it.

Can I just give you the opportunity to comment on some of the aspects of the Woodruff report? Have you read that report?-- No. 10

These are the recommendations, or the findings. Can I just ask you to scroll to the top of the page? Sorry, they are described as the major contributing factors and this is at the organisational level. The Woodruff report said, "There is no Queensland Health orientation process for executives, particularly for interstate appointments. This leads to a situation where executives are often unfamiliar with organisational legislation", et cetera. Do you have any comment to make in respect of that?-- Yes. I mean, I hadn't gone through an orientation process when I was appointed either, other than an outline of the region as it was in those days. It was fairly brief. So I think that would be a useful thing to ensure occurs. 20

Do you consider there is a lack of coordination and orientation for executives?-- Yes. 30

To the next page, please. In respect of the district, one of the contributing factors was "the local committee structure is complex, and lacks clear accountability systems for the reporting and management of patient safety and quality issues." Did you consider that your local committee structure was complex?-- At the time, no, I didn't.

Did you consider your committee process lacked accountability?-- I would agree there would be some committees that did not have a clear accountability process and structure. 40

The third point highlighted there: "The performance assessment of local management was based heavily upon budget integrity and ability to keep services going, with safety and quality of services receiving lesser emphasis." Do you think that's a fair comment?-- No, I - I didn't consider that budget integrity and safety - that safety and quality received a lesser emphasis, but certainly budget integrity was a major focus. 50

The next highlighted point: "There appears to be a culture at the Bundaberg Hospital which does not support the open reporting and analysis of clinical incidents." Do you accept that criticism?-- I didn't know it at the time but, yes, I think that's the case now.

The culture that you now acknowledge was at the Bundaberg Hospital, can you give your own explanation as to what you consider it was; was it in the executive, in the middle management?-- I think it is not - it is not only - I think that's part of the culture from an industry-wide perspective, not only at Bundaberg.

1

COMMISSIONER: But let's talk about Bundaberg. Who was involved in that culture at Bundaberg? Were you part of that culture?-- No.

10

You weren't? Was Dr Keating?-- No. We put in place systems so that people could-----

No, no, who was? Who was part of the culture that didn't support open reporting and analysis of clinical incidents?-- I have commented on that basis on the fact that people obviously didn't report. So whether it was middle management or whether it was other staff reporting to them.

20

They weren't encouraged to report, were they? When they did report, their complaints really weren't answered, were they?-- Not from my perspective. We were actually trying to encourage people to report. We would put education programs in place so that that could happen.

Well, who was part of the culture then that didn't support this open reporting?-- Staff from middle management - from base grade staff to those - those at middle management level.

30

Name the people who were part of the culture. If it wasn't you and it wasn't Dr Keating, who was it?-- I - I can't name individuals. I just - it appears from what has happened that people didn't report the concerns that they had.

No, but that was because, it is said there, there was no support for the open reporting and analysis?-- No.

And there was a culture which did not support that?-- I don't believe that's the case.

40

Oh, I see, right. So you disagree with that statement?-- In relation to support, yes, that is true. We had a culture where we were trying to support reporting.

I see?-- We put in place adverse event systems, there was education provided in relation to that. There was a lot of work that went into trying to ensure that that would occur.

There were a lot of systems, Mr Leck, but none of them seemed to work in the event, did they, when people had complaints about Dr Patel?-- No.

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MR MULLINS: The next point under the heading "team level", "There was no established process for the multidisciplinary review and management of clinical incidents." Do you accept that criticism, that there was no multidisciplinary process to assess clinical incidents?-- No, we had - we had established

ERROMED committees and were encouraging ERROMED and mortality and morbidity committees to be formed which were multidisciplinary. That's one of the changes we were trying to make. Traditionally discussion of incidents would be done by stream, that is either medical or nursing or whatever. Whereas our structure was trying to get the medical staff and the nursing staff to talk together in a multidisciplinary environment.

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The criticism seems to be refined in the next sentence there: "The executive", which would include yourself and Dr Keating - "are charged with investigating events and the process lacks openness and transparency which has led to a lack of trust between staff and management." Is that a fair criticism?-- I didn't think that the processes lacked openness and transparency. I didn't know that there was a lack of trust between staff and management.

10

Did you have a good relationship with Dr Keating?-- It was okay.

20

Did you know anything about the James Phillips incident back in about June 2003 where he died after surgery?-- I don't specifically recall that, no.

You would recall if you discovered that a man died after an oesophagectomy in circumstances where he wasn't expected to die?-- I may not be advised of that. I wouldn't usually be expected to be advised of individual events like that.

30

Do you recollect Dr Keating ever coming to you and saying, "Toni Hoffman is complaining about the fact that this oesophagectomy has been performed in circumstances where she believes the ICU doesn't have the capacity to look after these patients", at that time in June 2003?-- I am sorry, can you repeat that again?

Do you recall Dr Keating coming to you and saying, "Toni Hoffman is complaining about Dr Patel performing an oesophagectomy because she doesn't think the ICU has the capacity to look after someone in these circumstances."?-- No.

40

The next point: "There was no standard process and support of multidisciplinary peer review audit and quality improvement at clinical unit level." Do you accept that?-- Yes, there was not a standard process.

The next page. On the "individual level", this is a comment in respect of Dr Keating: "He was an interstate appointee and was unfamiliar with the Queensland legislative policy and administrative processes." Now, if Dr Keating was found to be unfamiliar with the processes, aren't you ultimately responsible for that?-- If Dr Keating had told me he was unfamiliar, then, yes, but I don't recall him saying that.

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Did he ever express to you that he had difficulty finding documents, becoming abreast of policies and procedures?-- I

don't recall him doing that.

1

Did you ever ask him whether he was abreast of the credentialing and privileging procedure, for example?-- I don't recall doing that.

The next point, "Dr Patel's behaviour gave rise to fear and polarised staff groups. There was no minimal commitment to facilitate the multidisciplinary review of patient care and adverse events. This resulted in a focus on interpersonal issues rather than what was best for patient care." I will give you the opportunity to comment on that. Do you have anything to say to that?-- Well, I - I disagree that there was no minimal commitment. I talked about structure that we tried to establish and the training that had been done in terms of adverse events. I don't have any other comment.

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All right. The second last point: "There appeared to be a medical culture of tolerating problems rather than addressing them." Any comment to make in respect of that?-- I wasn't aware of that at the time but in hindsight it looks like that was the case.

20

All right. Now, in Exhibit 477, you are communicating with Dan Bergin and you suggest that an audit team come up and deliver some training sessions around the code of conduct and "deliver some firm and scary messages"?-- Yes. I thought it was a serious matter and that was a way that it could be responded to.

30

At that point, as in 7 April 2005, had any of the surgeons at the hospital been credentialed and privileged since 2002?-- No, not that I am aware of.

Do you think that the resources might have been better spent in getting an audit team or a surgeon up to credential and privilege the surgeons?-- They are two separate, completely different issues.

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The focus, even at 7 April 2005, was not on solving the problems at the hospital, it was on punishing the people who leaked the information, wasn't it?-- No, it wasn't about punishment, it was about ensuring that people knew what the requirement was with respect to patient confidentiality.

Thank you.

COMMISSIONER: Thank you.

MR FREEBURN: Commissioner, could we have a short break?

COMMISSIONER: Yes, certainly. How long would you like? 15 minutes?

MR FREEBURN: 10 minutes.

COMMISSIONER: 10 minutes. All right.

THE COMMISSION ADJOURNED AT 3.46 P.M.

THE COMMISSION RESUMED AT 4 P.M.

PETER NICKLIN LECK, CONTINUING:

CROSS-EXAMINATION:

MR MacSPORRAN: Mr Leck, my name is MacSporran. I appear for Linda Mulligan. As Director of Nursing, you were her line manager; is that so?-- Yes.

She was required to report directly to you?-- Yes.

And if, for instance, there was a report of - concerning clinical competence, she would be required to bring that to your attention?-- I would expect that she would, yes.

And then you would direct how that was to be - or you would be in charge of and deal with how that was to be investigated?-- Well, not always, no.

What would you do? Would you refer it, for instance, to the Director of Medical Services?-- The Director of Nursing would be dealing with nursing staff, so in instances where there has been a problem, there would usually be another nurse who would investigate. I'm just trying to think of some examples.



Yes?-- Usually a senior member of the nursing staff from within the hospital and perhaps the HR Manager. 1

Where it was a medical issue, it would be the Director of Medical Services, for instance, you would refer it to?-- Yes.

So, if it was a medical problem or issue, you wouldn't refer it back to the Director of Nursing to deal with?-- No.

And in these cases, if we take the example of the report or complaint by Ms Hoffman of 22 October 2004, that was a complaint about the clinical competence, in effect, of Dr Patel?-- Yes. 10

It had to be referred to you, as it was?-- Yes.

And you didn't take any steps to refer it in any way for investigation back to Ms Mulligan?-- No.

It would be inappropriate for her, as Director of Nursing, to be dealing with that issue concerning the clinical competence of a doctor?-- Yes. 20

To take the example of the ICU, and similarly Ms Mulligan would not have the ability or capacity to overrule any judgments made by the medical staff as to the number of ventilated patients in ICU at any one time?-- No.

Or whether they should be transferred out of the ICU, for instance?-- No. 30

All of those types of decisions would be beyond her capacity to control?-- Yes.

She may, and would have the ability to bring it to your attention, perhaps, if she thought there was something amiss, but she certainly would not have the ability to direct the medical staff to change their practices?-- That's correct.

And in particular, with the ICU, she would have no ability in any way to direct Dr Carter to do anything?-- No. 40

And to be more specific, she would have no ability to direct Dr Carter to, for instance, update the ICU policies?-- No, that's correct.

She might have the ability and would have the ability to direct Ms Hoffman to update those policies?-- Yes.

And, for instance, Dr Keating, as Director of Medical Services, would have the authority to direct Dr Carter to do likewise?-- Yes. 50

Now, prior to Ms Mulligan taking up the role of Director of Nursing, the person occupying that role full-time before her was Glennis Goodman?-- Glennis Goodman, yes.

When did she leave, do you recall - roughly a time-frame?-- I

think it was September 2003.

1

So, there had been a significant period of time when others had acted in the role prior to the appointment of Ms Mulligan?-- That's right, yes.

And Ms Goodman had resigned?-- Yes, she had retired.

And was that an accelerated retirement? Was that earlier than you thought would otherwise have been the case, or was it just in the ordinary course of her leaving at that particular age?-- I didn't know why Glennis chose to retire at that stage. I do recall indicating to Glennis that we had been through a reform process in operational services in administration and mental health, and I felt that there was some further reform needed within nursing services, and I wondered whether Glennis decided that wasn't for her, but I don't really know.

10

That was certainly the timing of it - when that issue was raised with her. Her retirement seemed to coincide with that being raised - same time-frame?-- It wasn't that - the time-frame wasn't that far from it. I can't recall specifically.

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All right. You had some concerns as to whether Ms Goodman was the sort of person who would be prepared to engage in that reform process. I'm not being critical of her, but that - perhaps by personality type?-- I just think - well, I'm only - I'm only - I can't think of the word-----

30

I don't want you to speculate if that's what you are trying to say?-- Yes, speculating is the word I'm trying to think of.

Anyway, when Ms Mulligan came on Board, one of the roles she was to fulfil was to look at the reform process of the nursing service?-- Yes.

And that was a significantly large task; is that so?-- Yes.

40

And did you expect it to be also a difficult task?-- Yes.

And I don't want to go into the details of it, but there was a history of industrial unrest at the hospital?-- Yes. Not so much from nursing staff, but from other areas.

Also, before Ms Mulligan joined the hospital, the Assistant Director of Nursing had been removed from the line management position, hadn't she?-- Yes.

50

That is, before Ms Mulligan came on Board, the Assistant Director was in a position where she received reports from the Nurse Unit Managers and then on-reported to the Director of Nursing herself?-- Yes, I think that's the case. There was a - we had one reliever there, Beryl Callanan, for a period of time, and I respected Beryl's views and asked for her opinion on what might be done, and she felt that the Level 3 nurses needed a fair bit of development and didn't think that the

Assistant Director of Nursing would be able to provide the development that she thought was needed, and instead could be better - could perform the better function of assisting the DON, rather than being a direct report. 1

The effect of that was that the Nurse Unit Managers would be expected to take a greater degree of responsibility for their units?-- Yes.

And report directly to the Director of Nursing, Ms Mulligan?-- Yes. 10

And the Assistant Director would be just removed from that reporting process altogether?-- Yes.

That, inevitably, increased the workload of the Director, did it not?-- Yes, I think that's right.

And we have heard evidence here that there were something like 25 committees that Ms Mulligan, as Director, was required to attend?-- I'm surprised it was that much, but, yes. 20

I'm sorry, I should correct that. The reporting structure indicates 25 staff reporting directly to her?-- Right.

And there were a large number of committees that she was involved with?-- Yes.

As part of that overall supervisory role?-- Yes. 30

And it goes without saying that created a substantial workload?-- Yes.

As you would expect a Director of Nursing to have?-- Yes.

Now, part of that reporting structure and the committee structure involved the Executive Council meetings?-- Yes.

And that was a forum where the Executive, which included yourself, Dr Keating and Ms Mulligan-----?-- Yes. 40

-----would meet and discuss issues that had been raised and ventilated at other forums?-- The Executive Council - yes, the Executive Council would have some feedback from other committees such as the service forums - the Medical Service Forum, et cetera.

Which would indicate to those attending Executive Council meetings what had been referred to those other committees, and what, in fact, was being done about those items?-- Yes, that's right. 50

There would be a constant updating at these Executive Council meetings as to what was going on with the other committees, in effect?-- Yes.

If I could deal with - you have mentioned the Cost Centre Reports, and you indicated today that you didn't personally

see those - they didn't come to you in that form?-- No.

1

But you would know of them and what they dealt with by reports at, for instance, the Leadership and Management Committee meetings?-- We wouldn't usually talk about the content of those reports unless there was a specific reason for them to be raised.

Okay?-- The financial aspects of those reports were summarised and discussed at Finance Committee meetings.

10

Okay. So finance ones where you would attend and Ms Mulligan would attend?-- Yes.

Would Dr Keating attend those as well?-- Yes.

So, you might not have the Cost Centre Report in front of you, but you would be given a summary of its contents at the Finance Committee meetings?-- Yes. Well, yes, it was usually a summary of all the cost centres combined, so it may not mention an individual cost centre.

20

Can I deal directly with the Cost Centre Reports or the data coming out of the ICU. Firstly the Cost Centre Reports were completed by the Nurse Unit Manager of the ICU; is that so?-- Yes.

For much of the time we are concerned with here, that would have been Nurse Hoffman?-- Yes.

30

It is the case, isn't it, that before Ms Mulligan became Director of Nursing, and, in fact, for most of 2003, the Cost Centre Reports for the ICU were indicating on a regular basis ventilation hours over the norm, or above the norm?-- I wasn't aware of what was in the Cost Centre Reports in that regard.

They would, though, wouldn't they, have been discussed in that way? If that was the case, that would have been discussed in Finance Committee meetings in 2003?-- They may have been. I can't recall that specifically.

40

Would they be raised - the number of ventilation hours being above the norm - be raised in the ASPIC Committee meetings, for instance?-- Yes, they might well be raised there.

Do you recall them being raised in 2003 in respect of the ICU?-- I can't recall that, no.

Can I suggest this to you in a blanket way - and you have said you can't recall - but I'm suggesting that the data clearly indicates that that is the fact - the ventilation hours were over the norm for ICU long before Ms Mulligan joined in March 2004?-- I don't recall that being-----

50

You don't recall?-- I just don't recall that.

You do recall, as I understand your evidence, that there were

overruns for the ventilation hours, the number of patients, et cetera, in ICU in 2004?-- Yes.

1

Now, if we assume, for the moment, that there were overruns in 2003 and it went into 2004, we can look to the minutes of the Executive Council, Leadership and Management, Finance Committee minutes to see how those issues - or that issue in particular - is dealt with, can we?-- Yes, if they are minuted there, yes.

10

Okay. I want to take you briefly to some of these, if we can. The first one we will show you is the Executive Council minute, or minutes for 5 March 2004. Commissioner, as far as I know, most of these aren't in evidence. I propose to tender them as a group at the end of this exercise.

COMMISSIONER: Very well.

MR MacSPORRAN: If that's convenient?

20

COMMISSIONER: Yes, it is.

MR MacSPORRAN: If we can have them - perhaps this one up on the screen for 5 March? You see that you are present, Mr Leck?-- Yes.

And this obviously is before Ms Mulligan became Director, so it is early March '04?-- Yes.

And I see Toni Hoffman is there. She may have been, at that stage - early March - acting Director of Nursing?-- Yes, I would expect so.

30

If we go to the third page in, it is a reference to Theatre Management Group Report. See that?-- Yes.

And the second last dot point there is this item: "Further discussion held re: funding. Dr Martin Carter requested consideration for additional ICU nursing staff."?-- Yes.

40

That Theatre Management Group, was that headed by Dr Carter, or someone else?-- I think the Theatre Management Group was headed by Dr Patel.

Okay?-- But I - it may have changed over time.

Was there any nursing representation on that group as far as you know?-- Yes, there was the Nurse Unit Managers for theatre.

50

And perhaps ICU?-- I'm not sure. Possibly.

In any event, we see Dr Carter here apparently requesting consideration for additional funding - well, additional ICU nursing staff. That would be one way, I take it - that is, additional ICU nursing staff would be one way to cope with the - if there was a trend for increased ventilation hours coming out of data from the ICU, extra staff would be one way to deal

with that?-- Yes.

1

Right. Now, we go to the last page of that minute or that group of minutes. We see "ICU Trendcare". That's a - Trendcare is a term referring to data collection from all areas in the hospital; is that so?-- It relates to nursing hours provided against those hours the system indicates are required.

For a patient number or whatever?-- Yes.

10

We see there, "Toni Hoffman indicated that ICU currently sitting within benchmarks or slightly higher."?-- Yes.

Go to the next one, which is the Executive Council meeting of 2 April 2004. This would be the first council meeting after Ms Mulligan took up the position of Director of Nursing, but we see she is an apology at the meeting. But you were present, you see that?-- Yes.

20

Now, again, anyone attending these meetings would understand that they comprehensively deal with what's been happening with other committees?-- That there was a reporting system for other committees, yes.

Go to the second page in. You see under the heading, "Standing Agenda", first item, "Clinical Risk Management and Clinical Services Forums", and then the discussion is "ASPIC CSF" - that's Clinical Services Forum?-- Yes.

30

You see a dot point number of items that are being discussed at the ASPIC forum?-- Yes.

We see a dot point on the right-hand side at the top, which says "complete". Does that refer to the first dot point item under the ASPIC CSF?-- It indicates there's no further action required in relation to that item.

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50

Just ASPIC entirely or just that first dot point of ASPIC?--  
Oh, I would think it's ASPIC entirely in terms of what they've reported.

1

Okay. So would tend to indicate that there has been a discussion of those new forms, the NUM's receiving reports, that's all complete and so on and so forth?-- Yes.

We see in the next page "Theatre Management Group", "Staffing issues discussed"?-- Yes.

10

And, again, that may well have arisen out of the previous minutes where Dr Carter raised that issue. You see the next page there's at the top "five unplanned re-admissions to theatre investigated"?-- Right. Yes, yes.

That seems to be a continuation of the discussion relating to the Theatre Management Group, from the previous page obviously?-- Yes.

20

And, again, we see that there's a notation on the right-hand side, "Complete"; again, I assume, meaning that the investigation in respect of those five unplanned re-admissions is complete. It's been looked at, investigated, it's completed?-- I would expect so.

That's the form of reporting, is what I'm talking about I suppose?-- Yes.

Okay. If you go to the next one which is Executive Council 7th May of 2004, you see both yourself and Ms Mulligan present. The second page in we see the bottom item, "Monthly performance monitoring". You see, "Theatre FTEs have increased". What's FTEs? Is that-----?-- Full-time equivalents.

30

Full-time equivalents?-- Yes.

Opposite that or opposite those items is, "DON to follow up and investigate"?-- Yes.

40

What is a full-time equivalent? Is that a staffing issue, is it?-- The equivalent of a full-time member of staff. So it might be one full-time staff member, it might be several part-time staff.

So these are things that have been picked up, looked at by the appropriate person with a view to coming back to this forum and reporting ultimately as to what's happened?-- Yes.

50

indicate that action has been taken or, if not, the reason for not taking action?-- Yes.

The next page, "Unplanned and unexpected re-admissions", and we see opposite in the middle of that page in respect of that item, "Reports tabled and circulated to the CSF chairperson." That's the Clinical Service Forum chairperson, is it?-- Yes.

Who would that have been, do you know, from that topic?-- I'm not sure. It doesn't - it doesn't appear to be under the heading of a particular Clinical Service Forum.

1

All right. Would you have similar difficulty interpreting the note to the right, which is the agreed action section, "Clinical directors to review reports and action appropriately"?-- It should probably then have said "chairperson". So it looks like something was being sent to the chairpersons of the Clinical Services Forums and there was a request for the chairs of those - of those forums who attended Executive Council to review them. That's what my interpretation would be.

10

And who would those directors have been?-- Each of the clinical directors, so the Director of Surgery, Medicine, Obstetrics, Emergency Medicine and so forth.

All the medical staff?-- Yes.

20

So they'd be the appropriate ones to look at, for instance, unplanned and unexpected re-admissions. You'd expect that to be the medical staff to look at that and report back?-- Yes.

The second-last point there, "ACHS clinical indicator", "Comparative reports tabled for distribution to CSFs", "Clinical directors to facilitate discussions with NUMs at CSFs." So, a similar thing. The medical directors are to lead the discussion with the Nurse Unit Managers at the Clinical Service Forums?-- Yes.

30

The next one, 31st of May, is a Leadership and Management Committee meeting. Both yourself and Ms Mulligan are present. If you go to the third page under the topic "District Manager Issues", we see the second point for that section deals with mortality and morbidity and the notation is, "Area that most deaths occur is medical CSF. Training is being rolled out with adverse event then open disclosure followed by root cause analysis training." Is that a reference with trying to promote the need to report adverse events, document them so that they can be dealt with?-- Yes.

40

Is that one of the problems that you noticed in the system, that the complaints or concerns were not being documented?-- There wasn't - I don't recall that specifically in relation to Bundaberg but it was - it was known in the literature that people tend to under report and we did expect that there would be more reports and so we expected Bundaberg was consistent with anywhere else in that there was under reporting.

50

And training was given to promote that topic?-- Yes.

The next one, Executive Council 4 June 2004. Both yourself and Ms Mulligan were present. If you go to the second page you see the first topic under "Standing Agenda" is the ASPIC?-- Yes.

We see there a host of things, amongst them, "Wound dehiscence



needs definition." The next one, "Performance monitoring - ICU patient rating." Those issues were raised arising out of the ASPIC meeting, committee meeting?-- Yes.

1

What is the ICU patient rating? What's that?-- I'm not sure, I don't know.

Is it anything to do with the number of patients a particular ICU unit can deal with or is it something-----?-- I don't recall what that was about.

10

You don't recall. In any event, it's been raised or apparently has been raised at ASPIC and is coming back to the Executive to see what is being done about it?-- Yes.

The second-last page of that particular set of minutes there's a reference in the Theatre Management Group to, "Late shift commencing 1 July '04. Increased workload related to fatigue leave." That was another issue that arose. There was a shortage of staff through leave necessarily being given to cope with fatigue of staff?-- Yes, I recall that there had been an issue in relation to fatigue leave and there had been some discussion about starting a later shift because of that.

20

And it was a constant battle generally across the nursing service to staff areas - and ICU might be a good example of that, staff areas adequately and within budget. It was an uphill battle always?-- Many of the cost centres had difficulty remaining in budget, yes.

30

The next one, 2nd of July '04, the Executive Council.

COMMISSIONER: I'm not stopping you, Mr MacSporran, but I haven't seen any use in any of these so far.

MR MacSPORRAN: Commissioner, I take your comment on board. It is simply to demonstrate briefly, hopefully, and efficiently that many of these issues which were of concern were in fact raised at some of these meetings and an appearance of someone - by someone who was attending them such as my client would gain an understanding that there were issues being dealt with. These documents are not as I understand in the record and that's the whole purpose.

40

COMMISSIONER: Yes, I'm not stopping you.

MR MacSPORRAN: 2nd of July 2004, Executive Council, yourself and Ms Mulligan were present. If we go to the second-last page and we see a reference to, "Monthly performance Monitoring"; is that so?-- I can't see it, I'm sorry. Yes.

50

You see there, "Anaesthetic continues over budget due to areas not budgeted." "Advertising planned for theatre nursing." Then a reference to Ms Mulligan to meet with theatre staff re rostering. Is that so? Some of the same issues, staffing difficulties, ensuring there were adequate staff for various areas?-- Yes.

Executive Council, 3 September '04. Again, yourself and Ms Mulligan present. The second page refers to ASPIC again. And there is reference there to, "See ASPIC minutes 18 August '04." Is that so?-- Yes.

1

And a reference further down that same column, "Ventilation hours in ICU tabled"?-- Yes.

Do you recall that event, the ICU hours being tabled, ventilation hours?-- No, I don't.

10

And you don't recall the detail of that?-- No.

Can I ask you to look at the next document which is the ASPIC minutes for the 18th of August that are referred to in that Executive Council minute. The ASPIC Clinical Service Forum would not ordinarily include as a member Ms Mulligan, would it?-- No, not normally.

But you were - you were there routinely at those meetings?-- Fairly regularly, yes.

20

Okay. The second page of this one, it deals with this topic referred to in the Executive Council minutes I showed you a moment ago. You say there it's, "ICU - \$10,000 overtime budget", and so on?-- Yes.

Further down, "Discussion held re ICU category. Investment by QH mainly in Brisbane, Gold Coast and Nambour"?-- Yes.

30

Was that a reference to the funding going mainly to those centres as opposed to an ICU unit in Bundaberg?-- Yes, that's right.

And that that may have been a reason or was the reason why the ICU unit in Bundaberg was categorised the way it was and didn't have a higher capacity?-- As I recall the discussion from Martin Carter was that there was increasing demand in Bundaberg because of the ageing population and growing population but that resources were going to the metropolitan areas rather than regional areas like Bundaberg.

40

Yes, and with the ageing population in Bundaberg, you might have in the winter months a peak use of the ICU unit with elderly people requiring ventilation for severe cases of flu and such?-- Yes.

And yet, you didn't have funding to upgrade and cope with that situation?-- No.

50

The way the ICU at Bundaberg was then categorised?-- No.

So what happened later, there was an application proposed, being an application to upgrade the ICU categorisation by an increase in funding in 2005?-- Sorry, there was a proposal?

A proposal, yes. A proposal to apply for extra funding so the unit could be upgraded to cope with demands that had been an

upward trend in 2004?-- I vaguely recall that there had been - had been proposals for a variety of areas. I can't remember the detail of this one.

1

All right. If you go to the next minute, this is a Finance Committee meeting of 17 September 2004. The Finance Committee, both yourself and Ms Mulligan were members of?-- Yes.

The second page of that we see in respect of intensive care, "Linda noted skill mix problems had increased overtime and the casual pool needs to be developed to address this issue". It is the second-last item?-- Oh, yes.

10

Is that again a question of how to staff to properly resource the ICU by ensuring there was a casual pool available?-- Yes.

COMMISSIONER: How much longer are you going to be?

MR MacSPORRAN: Not long, Commissioner.

20

COMMISSIONER: What does that mean?

MR MacSPORRAN: I'm hoping to be another 15, 20 minutes. The Leadership and Management Meeting of 27 September '04 is the next one. I take you to the fourth page in, there's the reference to nursing staff?-- It hasn't come up on screen.

The fourth page in I think it's a reference to nursing staff. Although Ms Mulligan is not present, you see there is reference there to a discussion held with her the previous week and, again, it talks about approvals for extra positions for high activity periods?-- Yes.

30

That would include, I assume, the high activity periods in the ICU?-- It was for the hospital as a whole so, yes.

All right. The 1st of October, Executive Council. I just refer you quickly to the third page of that under the heading "Monthly Performance Monitoring". And there's a reference at the bottom dot point, "Need to maintain constant eye on overtime", and reference to ICU overtime in particular?-- Yes.

40

The 18th of October, Leadership and Management Committee. In respect of that on the fourth page in heading of "Staffing", "Recruitment processes could be improved and streamlined", and in the action section a host of people including the District Director of Nursing to discuss and meet?-- Yes.

50

The Finance Committee meeting in October, 22nd of October '04. The third page of that there's a reference to, again, the need to develop the casual pool to address issues in the ICU?-- Yes.

The following page, again with respect to intensive care, "Strategies to control activity and improve call in pool

are continuing", and yourself and Ms Mulligan are responsible for that strategy?-- Yes.

1

COMMISSIONER: Why don't you just tender these and ask him if these items appear on the document.

MR MacSPORRAN: All right. Thank you, Commissioner. Can I just deal with one further one in slightly more detail than that firstly. Leadership and Management Committee meeting, 1st November '04. Now, this one was the first meeting in time, it seems, after the report of Ms Hoffman of 22nd October '04; is that so?-- I'm not sure - the Leadership and Management was held once a month - once a week on a Monday so it would be around that time, yes.

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All right. In any event, here we have the sixth page in, there is a reference to Medical Staff Advisory Committee of October '04?-- Yes.

1

Do you see that?-- Yes.

There is a reference there to the "Quality support unit and the nurse unit manager ICU have been requested to provide data"?-- Yes.

10

And you had requested the - Ms Mulligan and Dr Keating to review the ICU activity?-- Yes.

That arose directly out of the letter, it seems, did it, not the letter from Dr - I beg your pardon, from Ms Hoffman in October. That was the response?-- I am not sure.

You don't recall there being a request immediately for data from the ICU and for a review to be carried out of the ICU activity by Ms Mulligan and Dr Keating?-- No, that's - no. That's come from the Medical Staff Advisory Committee.

20

All right. I will tender the balance. Can I just indicate which ones they are by date? Executive Council minutes of 12 November '04; the Leadership and Management Committee minutes of 15 November '04; the Finance Committee minutes of 19 November '04; the Executive Council - I beg your pardon, the Leadership and Management Minutes of 8 December '04, I will withdraw the tender of the 8th December Leadership and Management Committee minutes. The Leadership and Management Committee minutes of 17 January '05. I am sorry, we do have 8 December. I will tender those, 8 December 2004. Leadership and Management Committee minutes; the Finance Committee minutes of 21 January '05; the Leadership and Management Committee minutes of 24 January '05; Leadership and Management Committee minutes of 31 January '05; Executive Council of 4 February '05; and finally the Executive Council 4 March '05.

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COMMISSIONER: They will all be Exhibit 478.

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ADMITTED AND MARKED "EXHIBIT 478"

MR MacSPORRAN: Thank you. Mr Leck, can I take you briefly to your statement and to the occasion when you first dealt or met Mrs Mulligan, which you have in your statement as being the 17th of March 2004?-- Ms - Mrs Mulligan started on the 17th of March. I had spoken to Toni Hoffman about the week before.

50

You had spoken to Toni Hoffman the week before. And you spoke to Mrs Mulligan the week after?-- I think it was about a week later, yes.

I am suggesting it was the 26th of March. Does that sound about right, you spoke to her?-- It could be. I don't know.

I want to suggest to you this is the way the meeting went: firstly, she discussed with you having spoken to Toni Hoffman at the handover?-- Yes.

Because at that stage Toni Hoffman was the Acting District Director?-- Yes.

And you asked Ms Mulligan whether Ms Hoffman had said anything in the handover about the ICU?-- I don't recall saying that specifically.

10

You may have said that during the conversation?-- Yes.

And Ms Mulligan said to you that she'd spoken to Ms Hoffman and Ms Hoffman had said there was some issues to discuss in the future with Ms Mulligan relating to activity levels and the admission transfer of patients in ICU which was causing some communication issues with doctors?-- I can't remember being given that detail.

20

Do you remember something along those lines, that Ms Hoffman had told Ms Mulligan in the handover that there were some issues for future discussion about the ICU transfer and admission which had been causing communication difficulties with doctors?-- I don't recall.

She might have said that?-- She may have.

She also told you that Ms Hoffman had told her, Ms Mulligan, in the handover that she, Ms Hoffman, had spoken to you?-- Yes.

30

And told you about the same issues?-- Right.

Ms Mulligan told you that Ms Hoffman had told her that at a time in the future, according to Ms Hoffman, she would indicate and discuss with Ms Mulligan what the difficulties were, that you proposed to go back to Ms Mulligan at a later time after the handover and inform her and discuss with her what the difficulties were that she alluded to in that handover?-- I recall that there had been - Linda had indicated that Toni Hoffman would talk to her at a later time.

40

Okay. And, in fact, can I just suggest this to you: ultimately Ms Mulligan came back to you and reported to you that there were apparently issues between Ms Hoffman and Dr Patel in the ICU?-- She may have done. I don't-----

To assist you, perhaps, I will put a date on it. She came back and told you that on the 8th of July 2004, several months later?-- Right. I do recall her - we had - we had talked about managing - that Linda had spoken with Tony about managing Dr Patel's behaviour and that she spoke to me a couple of times in relation to that, but I don't recall when that was.

50

All right. Well, I have suggested to you it was about July -

8 July, in fact, that day, she spoke to you about that for the first time. If you can't recall, simply tell us?-- Yeah, I can't recall when that was.

1

One thing is clear, that you didn't show Ms Mulligan, on the occasion you spoke to her when she first met you after taking up the position - you didn't show her any note you'd received from Toni Hoffman?-- No, I did not. That was at her request.

Well, I suggest to you there was no mention of the note at all?-- No, that's not right.

10

You see, there had been a period of a couple of weeks, hadn't there, between you speaking to Toni Hoffman and receiving the note and you speaking to Ms Mulligan on the 26th of March?-- Yes, well, it was a week or so, I thought, but, yes, that's probably right.

Are you sure now that you didn't destroy that note that she'd given you in that period of a couple of weeks?-- Yes.

20

Your email, as you have been referred to, of 11 April this year, your email reads as though you destroyed that note virtually immediately upon receiving it from Ms Hoffman, doesn't it?-- Yes, it does, but I didn't.

Because the way it reads is she gave you the note, you destroyed the note and told her that if she wanted to pursue it officially she should come back to you. That's the way it reads?-- It does read like that, yes.

30

So the normal reader of it would be suggesting you destroyed it after you got it and then told her if she wanted to make it official to come back to you?-- That's not what happened.

Okay. In any event, I have suggested to you that you didn't discuss the note in any - the fact you have a note, I mean, you didn't discuss that with Ms Mulligan at any stage on the 26th of March?-- Yes, I - yes, I did and Linda didn't - as I had said before, Linda indicated that because there hadn't - because she hadn't wanted to - for me to pursue it, in her - in her view it should have been - in her view it should have been handed back or she said that's what she would have done.

40

In any event, you told us you didn't ever show it to her?-- No, I didn't.

And it was, of course, the case that she was new at the hospital?-- Yes.

50

Brand new, in fact?-- Yes.

She'd come from Dalby?-- Yes.

You wouldn't expect at that stage, certainly, that early stage she would know any of the personalities involved?-- No.

She had only just had the handover from Ms Hoffman?-- Yes.

And she had told you, in one form or another, what that handover had involved from Hoffman?-- Yes. 1

And she made it clear to you that whatever had been said in the handover between herself and Ms Hoffman, there had been no clinical issues raised?-- That's right.

And you didn't at any stage - with knowledge of this note that Ms Hoffman had given you some weeks earlier, you made no attempt to disabuse Ms Mulligan of her view that no clinical issues had arisen at that time?-- I don't recall commenting on that, no. 10

No. See, I suggest there was no mention made even of Dr Patel on the 26th of March?-- I don't - I don't recall that.

Okay. Can I deal with a couple of things quickly? On the occasion on the 14th of February this year, when there was what was referred to by Dr Keating in evidence here, as I understand it, a hot debrief involving Dr FitzGerald. Do you recall a meeting with Dr FitzGerald on the 14th of February?-- Yes. 20

Dr Keating said, as I understand it, he thought at that meeting Ms Mulligan was present. She may have been present, I think he said?-- I don't recall whether she was present or not.

Can I suggest to you formally she wasn't. She wasn't at work that day?-- Yes. 30

Do you recall there being a meeting the following day involving either Dr FitzGerald and/or Sue Jenkins, I think it was?-- I-----

I am sorry, I am not suggesting you were present the following day, but that a meeting occurred. You may not even know of it but a meeting occurred the following day, the 15th, between Ms Mulligan and Dr FitzGerald, and/or Sue Jenkins?-- I recall meeting with Dr FitzGerald a couple of times, once when he first arrived and then another time during the day, but I don't know whether that was the 14th or the 15th. I don't recall any other meetings with him. 40

All right. There was some evidence given here concerning an email of 13th of January from a Karen Smith to you which referred to a treacherous day. Do you recall that email?-- Yes. 50

You forwarded that on, quite properly, to Ms Mulligan to investigate?-- Yes.

You were concerned it may - given the timing, in March of this year, you were concerned it may have been a - January, I should say - may have been a reference to the Patel difficulty?-- Yes, that was the day we had spoken to - Dr Keating and I had spoken to Dr Patel.



And Ms Mulligan sent you an email straight back, to put your mind at rest, it didn't relate to that and telling you what it did in fact relate to?-- Yes.

In fact, it seems as though she had actioned it even before you had requested for her to clarify it. That's the tenor of it? She refers to seeing Muddy, that's Karen Smith, isn't it, by nickname?-- Yes, it is.

Earlier in the day and then she was able to report back to you as soon as you passed on the email?-- Yes.

It reads as though she had been proactive, as it were, in trying to follow that up?-- Yes.

All right. I will tender that email.

COMMISSIONER: All right. That will be Exhibit 479.

ADMITTED AND MARKED "EXHIBIT 479"

MR MacSPORRAN: Excuse me, Commissioner. Just one quick matter, the chronology that's been prepared, have you seen the chronology that relates to yourself, Mr Leck? I assume you didn't prepare it yourself. It is headed "Leck chronology"?-- Yes, there is two

MR FREEBURN: There is two.

MR MacSPORRAN: There is two, is there?

MR FREEBURN: One that's prepared by Mr Leck's solicitors and there is one that's prepared by the Commission.

MR MacSPORRAN: Okay, I am just wanting to clarify something on the one I have got.

COMMISSIONER: No, that's not in evidence and it has no authority from Mr Leck.

MR MacSPORRAN: All right. There seems to be an incorrect date but we can probably deal with that in a different way. Your statement at paragraph 69, I think it is, talks about - 64 - paragraph 64, bottom of the second last page. Do you have that?-- Yes.

Refers to the entire period arranging for the review of Dr Patel's clinical standards having regular meetings with Ms Mulligan so she could inform Ms Hoffman and others of developments?-- Yes.

What you, I take it, mean by that is you were having your usual regular meetings as district manager with the Director

of Nursing, and as part of that process, when appropriate you would inform her, Ms Mulligan, of what was happening with the Patel investigation or review?-- Yes.

1

You weren't actually having meetings regularly about the Patel issue?-- No, it was part of regular meeting with her.

Okay. Just finally, when you were being examined earlier this morning by counsel assisting, you were shown a letter from Toni Hoffman of 22 October which is a letter of complaint. And it was suggested to you that that seemed to indicate that Ms Hoffman had gone directly to you and bypassed her line manager, namely Ms Mulligan, and you said that wasn't the case?-- No, it wasn't the case.

10

In fact, is the sequence this: that there had been contact between Ms Mulligan and Ms Hoffman in the days leading up to them both coming to see you on the 20th of October, that you knew that by way of background?-- No, I don't - no, they hadn't come - no-one had come and seen me until-----

20

The 20th?-- The 20th.

I am not suggesting otherwise. I am saying the lead-up to the 20th there had been contact between Ms Mulligan and Ms Hoffman about other issues?-- There may have been. I don't know.

But that as soon as, it seemed, Ms Hoffman raised issues of clinical competence concerning Dr Patel with her, Ms Mulligan, Ms Mulligan immediately came to you and organised a meeting the same day?-- Yes, she did.

30

And you saw them urgently?-- Yes.

And at that meeting you took - you took notes of what was said?-- Yes, I did.

And you asked Ms Hoffman to go away and put it all in writing and forward it to you?-- Yes.

40

And that's what came into you on the 22nd, which is the letter that you have been referred to here?-- That's correct.

At that meeting on the 20th you made a notation in your statement that Ms Mulligan did most of the talking?-- Yes.

Is that your recollection, is it?-- That Ms Mulligan did most of the talking? Oh, in terms of facilitating the conversation, yes.

50

Can I suggest this to you: you took detailed notes of the conversation. They are available to you if you need to check, as I understand it?-- Yes.

You will find in there, I suggest, that you have noted very little as being said by Ms Mulligan and a lot being said to you, as was the case, by Ms Hoffman?-- Yes, I believe I meant facilitation of the meeting.

Yes. I understand. Just finally on the meeting that you had with Ms Mulligan, the first meeting which I suggest was the 26th of March, did you notice that Ms Mulligan took some detailed notes of the meeting, the conversation with you?-- No.

1

Right. Thank you.

COMMISSIONER: Thank you, Mr MacSporran. I propose to adjourn now. Mr Freeburn, we can't have this room tomorrow so your client has a choice, either adjourning till tomorrow where we sit around a table like this in the Court we've been using - the other Court we have been using, or we come back here on Thursday.

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WITNESS: Can I just think about that for a few minutes?

COMMISSIONER: All right. Well, I will adjourn now anyway and you can-----

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MR FREEBURN: We will let Commission staff know.

COMMISSIONER: Let the Commission staff know. It is your client's choice. Very well. It will be 9 o'clock tomorrow or 9 o'clock on Thursday, as the case may be.

THE COMMISSION ADJOURNED AT 4.59 P.M. TILL 9.00 A.M. THE FOLLOWING DAY

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