



## 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 19/10/2005

..DAY 27

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THE COMMISSION RESUMED AT 9.02 A.M.

PETER NICKLIN LECK, CONTINUING:

CROSS-EXAMINATION:

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MR DIEHM: Good morning, Commissioner. Mr Leck, my name is Geoffrey Diehm and I appear for Dr Keating?-- Yes.

The first thing I want to ask you about concerns the time when you received Ms Hoffman's complaint in October of 2004. You have said that you spoke to Dr Keating shortly thereafter, and his view was that the problem was entirely a personality problem. Am I understanding your evidence correctly?-- My recollection of that phrase is more from an earlier occurrence but he was talking about that there was personality conflict and he was reluctant to proceed because he thought the complaint was more about personality difficulties rather than - than clinical issues - problems.

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All right. You say that - and I appreciate that you are paraphrasing, no doubt, but you say that he thought it was more about personality problems. Do you accept that he had a view that the substance of the complaint did involve some clinical issues?-- Yes.

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And would you accept that he had a view that those clinical issues needed to be looked into?-- Yes, he was reluctant initially but he agreed.

All right. When you say reluctant initially, are we talking about within a few minutes of conversation he was amenable to the idea of there being an investigation?-- He was - the reason why I decided that I would ask him to arrange a meeting with a few of the doctors that had been mentioned in the letter was because of his reluctance, and that would not only help corroborate, if there was a problem, that it was there, but it would be a matter of doctors talking to doctors. So doctors speaking to Dr Keating, which would, in my view, convince him more about whether an investigation was needed or not.

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All right. Now, you have said that the phrase - again to coin it entirely personality based came from an earlier conversation that you had had with Dr Keating, something that preceded the complaint by Ms Hoffman on 22 October?-- Yes, that related to her March correspondence.

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Would it be right to say that you'd had a number of conversations with Dr Keating over the preceding months in which there had been discussion of there being personality

conflict between the ICU staff and Dr Patel?-- Yes.

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And that was conflict that was being perceived by the executive as being personality based?-- Yes. At one stage we were looking at a mediation session between Dr Patel and Toni Hoffman.

So aside from any occasion in March of 2004 when Ms Hoffman had been to see you with her then written complaint, there had been other occasions upon which Dr Keating may have said - made comment to you about his view of there being problems between Dr Patel and the ICU that seemed to him to be driven by personality problems?-- Yes.

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Now, this talk of a mediation or some strategy to resolve those problems - attempt to resolve those problems of personality, were those plans current as at the day that Toni Hoffman came into your room on the 20th of October to first register her complaint - I have got to be careful how I say that. To register her complaint in October of 2004?-- Yes.

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As a result of her raising those matters with you, you instructed Dr Keating and Ms Mulligan to suspend those plans?-- Yes, I did.

Because you wanted the investigation process into the substantial issues raised in her complaint, the potentially clinical issues, to proceed first?-- Yes.

Would it be fair to suppose that any reluctance on Dr Keating's part to move into that investigation stage may have been borne out of a desire on his part to continue on with the attempt to resolve the personality issues at that stage?-- It may have been. I felt that, given the nature of the complaint, it wasn't worthwhile proceeding with a mediation. It seemed obvious to me that with the issues that were raised, it wasn't - it wasn't an appropriate time to be trying to conduct a mediation session.

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I am not asking these questions to be critical of that decision that you took, Mr Leck, but in terms of the scenario that was being faced by yourself and Dr Keating when you were having this discussion at that time, it seems that there was a plan in place to try and resolve long-identified, personality-based problems, and that with the complaint came the time to make a decision about how to proceed from there, and you are talking about a degree of tension that existed between Dr Keating's preference as to how to deal with matters and your preference as to how to deal with matters. Is that a fair understanding of the situation you were confronted with at that time?-- It seemed to me that he believed that the issues that were being raised were more about personal conflict than substance in terms of clinical issues.

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But he did not think that there wasn't any point in investigating the clinical issues at all, did he?-- I don't recall him saying that, but his reluctance led to me to ask him to arrange a meeting with a couple of the doctors.

All right. Is much of what you are talking about here an impression that you had rather than actual words that he spoke, is that right?-- Yes, I think that's right.

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Now, from that moment forward, Dr Keating, I suggest to you, was fully cooperative with respect to the extent that you wanted him to participate or arranging the investigative process?-- Yes.

Indeed, to that end he made contact with external sources and sought out the names of people who may be able to carry out that investigation?-- Yes.

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Dr Baker being one, but a person whom you deemed to be unacceptable, for reasons that you have already canvassed?-- Yes.

You said that you took no action to suspend or dismiss or limit Dr Patel's practice at the time of Ms Hoffman's complaint in October of 2004?-- Yes.

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You said in your evidence on Monday, as I recall it, that that was firstly on the advice of Dr Keating, in the sense that he thought that the problems were predominantly or - again, I will be careful as to how I word it - he thought, as you have explained it today, that the problems were more to do with personality problems than they were clinical issues. But do I take it from your answer on Monday that you also exercised some independent judgment in that you were otherwise unaware of circumstances that demonstrated to you that it was necessary to suspend Dr Patel?-- Yes.

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And by that do you mean that your perception was if there were serious problems with this surgeon, they'd have become apparent to you from other sources?-- Yes. We didn't - there was no information that I was receiving, from the trend in information we had from adverse events or was being pointed out to me from clinical indicators, indicating that there was a problem.

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Again, your expectation at that time was that if there were serious problems, those sources of information should have been indicating those things to you?-- Yes.

And did you in fact at that time carry out an investigation in the sense of going to those operating the database and trying to find out what adverse events there had been, and so on?-- Yes, I had spoken to - or emailed and spoken to Leonie Raven.

With respect to the interrelationship between the investigation concerning Mr Bramich and the receipt of Ms Hoffman's complaint, you have told us that you carried out some inquiries - or received some information, perhaps I should say, about the issue of whether this was a sentinel event?-- Yes, that's right.

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When did you make those inquiries or receive that information?-- I had received a copy of a sentinel event form

and an adverse event form - they both came down together - and I would say it was in a couple of days of the event, and I made inquiries as soon as I'd received those with the quality office.

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Were you aware of there having been a change in Queensland Health policy in about June of 2004 requiring sentinel events to be advised to head office?-- I was aware there had been a change for advice to be provided. I am not sure when the date was for that.

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All right. You are not sure, firstly, about when that change came to be; is that right?-- Yes.

Do you have a recollection of when you became aware of the change?-- No, I don't recall.

Because there is evidence before this Commission that the Bundaberg Hospital, those working underneath you responsible for the management of these issues, did not become aware of that change until after the death of Mr Bramich and the reporting of the sentinel event?-- Right.

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Do you have any knowledge of those circumstances?-- No.

Now, is it right to say that you did not at any time receive any information directly from Dr Keating saying that he did not regard it as a sentinel event?-- I can't recall whether I spoke to Darren directly about that. I can recall the discussion with the quality office about it but I don't recall - I went and saw Darren about conducting an investigation but I don't recall whether or not there was discussion then about whether there was a sentinel event.

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In any event, you were satisfied with the position that Dr Keating pursue an investigation of the circumstances surrounding Mr Bramich's death?-- Yes.

Did you become aware that it was a case that had been referred to the Coroner?-- At some stage I think I was. That was much later I recall being made aware of that, but I don't know exactly when that was.

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At the time of speaking to Dr Keating concerning Ms Hoffman's complaint in October of 2004, I suggest to you that Dr Keating had not at that time completed his investigation. Does that accord with your recollection?-- Yes.

So he had not by that time reached, as he explained to you, any concluded views with respect to the matter?-- No. Around that time he had indicated that he didn't think there were any problems with the management of the patient but I am not sure of the exact time-frame for that.

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Now, when you say that, do you mean that to be the exact words that he used to you, or the impression you were left with?-- I can't recall that they were his exact words.

What I ask you is whether you can recall that such a comment, whatever it specifically was, was made about the total management of the patient or whether it was about the role of Dr Patel?-- I took it to be the total management of the patient.

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The context of the discussion you were having at the time, was it concerning Ms Hoffman's complaint about Dr Patel?-- No, I don't think so, no.

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What was the context of the conversation?-- I really can't recall. I can only speculate that it would have been at one of our regular meetings, but I don't recall.

Before the time of Ms Hoffman's complaint?-- I think it was but I can't be sure.

And at a time where, as you understand it, he had not yet completed his investigation?-- Yes.

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Are you able to offer any reason as to why he would have been continuing with his investigation if he was expressing the view that he saw no issues in the management of the patient?-- As I recall, he was just updating me in terms of where he was - he was at with it.

What I would suggest to you is that by the time of Ms Hoffman's complaint concerning Dr Patel in October of 2004, Dr Keating had received information from people involved and had carried out inquiries with external sources, and was of the view that there were matters concerning the management of that patient that needed to be continued to be explored.

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COMMISSIONER: How would he know that?

MR DIEHM: I am sorry, Commissioner. I am asking you whether you are aware as to whether that was Dr Keating's state of mind from anything he told you at that time?-- No.

Did he tell you anything, at the time of Ms Hoffman's complaint and your discussions with Dr Keating about it, regarding his views about the management of Mr Bramich?-- I can't recall anything specific about Mr Bramich, no.

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Thank you. In any event, you told him at that time that he should cease his investigation concerning Mr Bramich?-- Yes, I think it was shortly after I received the complaint, so some time afterwards. Not long afterwards.

And that was because you had determined that there should be an external review of the patient - sorry, of Ms Hoffman's complaint?-- Yes.

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And that view you had reached before speaking then with the other three doctors; Dr Strahan, Dr Berens and Dr Risson?-- I don't know the exact time-frame. I had spoken to the Director of Nursing and indicated that Darren had - had advised - had indicated that he didn't think there were any problems with

the management of the patient, and she had expressed some concern in light of Toni Hoffman's complaint that that would not be - that would not be viewed favourably by nursing staff.

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But what you have related to Ms Mulligan about Dr Keating's view wasn't something that you'd extracted from him at a recent time?-- It was relatively recent but I just don't know the time-frame exactly.

But it wasn't in response to Ms Hoffman's complaint?-- In terms of speaking to Darren about-----

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About Mr Bramich?-- No, it wasn't. No, it wasn't directly in relation to that.

I will ask you some questions about credentialing and privileging. You said that you delegated that task to Dr Keating?-- Yes.

Now, even if you had not delegated the task to Dr Keating, the policy concerning credentialing and privileging would have required the Director of Medical Services to be involved, wouldn't it?-- Yes.

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He would have to be a member of the committee?-- Yes.

And, indeed, he would be expected to be the chair of the committee?-- Yes.

He would be expected, perhaps with the support of ancillary staff, to organise the meetings?-- Yes.

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Now, you have indicated that you didn't give a written delegation?-- No.

And nor did you give a delegation, I take it, that was any more precise than "we need to get this task undertaken and underway"?-- Yes, and I wanted it to be the priority in terms of clinical governance issues.

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Now, after that conversation, it is right to say, isn't it, that Dr Keating regularly reported to you on his progress with respect to credentialing and privileging?-- We spoke about it on a number of occasions, yes.

Well, given that it was something that was of importance to you, even if he didn't come to you with the information you would have sought it out from him, wouldn't you?-- Yes.

And that happened, one way or the other?-- There were discussions at our regular meetings, yeah.

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In the meantime, interim privileges were granted to the doctors at the hospital, weren't they?-- Yes.

Those were conforming with the policy given on the advice of the Director of Medical Services?-- Yes.

But they were given by you, weren't they?-- Yes.

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And we know that - and in the sense that they were given by you, in that you signed the letters granting those interim privileges?-- Yes. Darren drafted the letters and I signed them off.

Yes. And when in late 2004 there was able to be convened, in compliance with the policy, privileges committees for certain specialties, there were recommendations subsequently made to you from the committee or committees for the granting of privileges, weren't there?-- Yes.

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And you, in due course, signed letters granting those privileges-----?-- Yes.

-----to those practitioners?-- Yes.

My suggestion to you, Mr Leck, is that given that you are receiving regular reports from Dr Keating about the privileges process and how it is progressing, and given that you retained the practice of signing off on the letters actually granting the privileges, it is not really right to say that you delegated your responsibilities with respect to that matter to Dr Keating, is it?-- I - I did delegate. The meetings we were having on a regular basis were me asking him in our - in our weekly meetings where he was up to with it and he explained that there had been some contact with Fraser Coast and over time that there had been difficulty getting college representatives to sit on the committees, those sorts of things. But I was persistent in relation to where it was up to.

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With the information you were receiving, if at any time you were dissatisfied with the progress that Dr Keating had been able to make and expected something more to be done than he was able to achieve, you would have taken whatever tasks you had given him back off him and seen to them to be done yourself, wouldn't you?-- After it had been going - my discussions with him had been going on for some time and it didn't appear that a lot of progress was being made, I asked him whether I needed to intervene with the Fraser Coast who he advised me had some responsibilities, one, it was either the med super for the deputy med super over there had been allocated the responsibility of getting the College representatives and he told me that wasn't necessary.

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And you accepted his answer in that respect?-- Yes.

The point, Mr Leck, that I put to you is that as unsatisfactory as it may have been, that progress wasn't being made, you were being kept informed of what progress there was and the reasons for the delay, weren't you?-- Yes.

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And you took the view that it was appropriate for Dr Keating to persist in the endeavours that he was following to achieve the tasks that you had set for him?-- Yes.

In January of 2005, Dr Keating had - and perhaps if I can put a timeframe on it - roughly speaking, in about the second week of January 2005, so, say, that somewhere between the 6th and the 13th, remembering the 13th of January is the date that I think you've adopted as being when you met with Dr Patel and with Dr Keating-----?-- Yes.

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-----to discuss the complaint against him. In that roughly one week leading up to there, you had discussions with Dr Keating, did you not, about Dr Patel and the issues surrounding the complaints that had been made against him?-- In the week prior there was - sorry, can you just repeat that again?

Yes. In the week prior to the 13th of January when you met with Dr Patel?-- Yes.

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You had had discussions with Dr Keating concerning the issues arising out of the complaints against Dr Patel?-- I recall that I had met with Dr Keating some - a few days prior, it might have been the week prior. That is when he had indicated to me that he was - he had restricted Dr Patel's privileges and I remember him making a comment along the lines of, "He's burned all his bridges", but I don't have any other specific recollection.

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Was the context of that comment that there were conflict issues between Dr Patel and a large number of the people that he would be expected to work with as a surgeon or the Director of Surgery at the Bundaberg Hospital?-- Yes, I think that's so, yes.

Now, the restriction on privileges that you speak about, was

that that there would be no oesophagectomies?-- He had indicated that there would be no - that he couldn't do anymore intensive care elective surgical procedures-----

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If I may rephrase?-- -----including-----

If I may rephrase that for you? Or does that mean or did he explain that as being no elective surgery that was expected to result in an ICU admission-----?-- Yes.

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-----afterwards?-- Yes.

Indicating the level of seriousness of the surgery being undertaken?-- Yes.

And that, in your understanding, included oesophagectomies?-- Yes.

Now, you were asked some questions, I think two days ago about your e-mail shortly before Christmas 2004 after the incident involving Mr Kemps where you posited the question about whether any of the oesophagectomy patients had survived?-- Yes.

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Did you go on holidays after that e-mail?-- Yeah, I went on leave on the 24th of December.

24th of December, and in fact, did you leave on the morning of the 24th? Were you not there for all of the day?-- I wasn't there on the 24th.

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Right. And when did you return?-- I think it was the 3rd, I think I was back at work on the 4th of January.

All right. And this conversation with Dr Keating where he's related to you these restrictions on Dr Patel's practice is within a few days of your return?-- I think so, yes.

Did you take that as being a response to your e-mail concerning Mr Kemps?-- I don't think I recalled my e-mail concerning Mr Kemps.

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It wasn't something that entered your mind?-- No.

In this conversation or conversations at that time, if there was more than one, where you were discussing with Dr Keating Dr Patel's restrictions that had then been imposed, did Dr Keating tell you - or I rephrase that. I suggest to you that Dr Keating told you that in his view, because of Dr Patel having, I think you used the expression "burned his bridges", that it would be appropriate in the longer term for the Bundaberg Hospital to seek out a new Director of Surgery?-- I don't recall that.

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You say you don't recall it. Would you accept that he may well have discussed that with you at that time?-- He may have.

In the interim - well, I'll rephrase that given - I'll withdraw that, given your inability to recall. Did Dr Keating express to you at around that time his general views about Dr Patel's competence?-- He may well have done. I know, yeah - no, I just don't know exactly what was said, I don't know what was said.

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Well, accepting that you can't recall anything specifically said, was there anything said or not said or done that gave you an impression that Dr Keating remained of the view that Dr Patel was at least an average surgeon?-- Yes, there was some - he - the impression I had was is that he was still, he still didn't have a great deal of concern about his clinical skills, despite the fact that restrictions had been placed, so he's obviously had some concern. I just can't recall a lot, there was nothing other than that that was making me particularly concerned.

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Did you understand from what was said to you, expressly or again, in the context in which things were said, that Dr Keating's greater concerns were about Dr Patel's inability to work with the other people that he would have to work with at the Bundaberg Hospital?-- Well, he made the comment about having burned his bridges, so yes, I think that was in that context.

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Can I ask you some questions now about statistical information? You've been asked some questions by others about certain statistics that were referred to in - or referred to by Dr FitzGerald in his draft report, and as I recall your answer, you said that you couldn't recall seeing those statistics in the report when you did belatedly get it. Dr FitzGerald referred in his report with respect to the statistics regarding complications from cholecystectomies laparoscopically performed as having obtained those statistics from the Health Information Centre and from the ACHS?-- Right.

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Now, in your understanding, did the - was it the case that those sources of data are external to the Bundaberg Hospital?-- The Health Information Centre's in corporate office in Brisbane, and yes, the ACHS is as well.

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Now, the ACHS is apparently where he received the comparative data from. The Bundaberg Hospital had as its data source a program called Transition 2; is that right?-- Yes.

And in some respects there was some interface between it and the HIC database; is that right?-- Yes.

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Mr Leck, with what you've come to know now about complications, would you accept that there must have been something amiss with either the collection of or the access to data concerning complications within the Bundaberg Hospital?-- There must have been, sorry?

Something amiss with the collection of data or the access to data at the Bundaberg Hospital internally?-- Yes.

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You were, I take it, never aware of there having been a complication rate for any procedure 25 times or larger than the norm for a hospital like Bundaberg?-- No.

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Finally, with respect to data, as part of the clinical governance strategy that there was at the Bundaberg Hospital over the last several years, was it envisaged and intended that the clinical heads of departments would be the ones who would take the responsibility for seeking out specific data relating to their particular areas of practice with a view to assessing its relevance to the safe practice of medicine or surgery in their department?-- Yes.

And was the intention behind that, that as the leaders of their departments and being at the coalface and having the expertise, they were the persons best placed to judge the relevance of data?-- Yes.

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But that system relied on two things, I suggest to you: firstly, the proper data being available to them; do you accept that proposition?-- Yes.

And secondly, their honesty in dealing with it?-- Yes.

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Moving to another topic again, this time concerning the patient that we've been referring to in these proceedings as P26, but he's the 15 year old boy who lost his leg following an accident and a stay at Bundaberg in early - well, late December, early January; do you know the patient I'm speaking of?-- Yes.

Now, you told us that Dr Keating told you that he thought that that patient's management was okay?-- Yes.

You remember that Dr Keating prepared a report at the request of Mr Bergin?-- Yes.

Through you?-- Yes.

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In that report, Dr Keating identified, did he not, problems with the management of that patient?-- I don't recall that.

Didn't he identify as being the problem with respect to the management of that patient as being a delay in transferring him to Brisbane?-- He may have.

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Because, I suggest to you he identified through the report that it would be in order to establish as a policy certainly through an instruction to staff that patients that had undergone emergency vascular surgery, as this patient had, should be transferred to a major tertiary hospital as soon as they are stable?-- Yes, I recall there was something at the end of the brief.

Well, having been refreshed about that, do you accept that that was in response to what he identified as being a problem with the management of that patient?-- Yes.

And indeed, that was the source of the complaint, that was the basis of the concern that Dr Rashford had raised through Mr Bergin, was it not, a delay in transfer of the patient?-- Yes.

I suggest to you that Dr Keating did not say anything to you about that case either being or not being a sentinel event?-- I was given an impression that it wasn't a sentinel event, I can't recall anything specifically though.

All right, you've got no recollection one way or the other of anything specific being said to you by Dr Keating about that?-- No.

I'm going to touch back on some evidence that you gave arising out of credentialing and privileging and you've made mention of it again here this morning about a conversation that you had with Dr Keating about his progress on credentialing and privileging wherein you said that he became rather short with you and complained that he wasn't able to work the hours that you worked and that he had a family that he needed to get home to at times and the suggestion being that you didn't so you could work those longer hours?-- Yes.

Do you recall the evidence I'm talking about?-- Yes.

It's something that might be apparent to those of us who look at times on e-mails that are sent, Mr Leck, but you did, I take it, work very long hours?-- Yes.

Including working very late into the night?-- Yes.

How many hours a week were you at work?-- Usually about 60, I would think, usually around that.

You, to be working those sorts of hours, presumably had a heavy workload?-- Yes.

Even working those hours, were you getting through your workload or were you falling behind?-- I would sometimes fall behind.

You no doubt could have done with more assistance in your job?-- Yes.

But budgetary constraints were such that you couldn't accommodate it?-- No.

Dr Thiele gave evidence in Bundaberg suggesting that from his experience, the job of the Director of Medical Services was such that no one person could do it alone; do you have a view about that?-- Yes, I agree that it is more than a job for one person.

When Dr Keating started at Bundaberg, you've spoken about how you raised with him the issue of clinical governance. It was something, including credentialing and privileging, that you

saw as being very important to be got on top of?-- Yes.

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And was that because it was in a pretty poor state at that time?-- Yes.

Is it fair to say that whilst Queensland Health had at those times a policy about a particular aspect of clinical governance and a policy about another aspect, there was no overarching model for clinical governance in its hospitals?-- No, I think that's correct.

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So to use an expression that's been sometimes mentioned in these Commission - in the former Commission in particular, was it the case that yourself and Dr Keating, looking into those issues at Bundaberg, would have to, to a certain extent, re-invent the wheel, come up with your own overarching model?-- Yes.

Fitting into it the policies that there were but coming up with your own things to dovetail in and around them?-- That's right.

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Now, to establish such a system involves more, does it not, than just simply writing a policy and handing it out to people and saying, "Here's the process, off you go."?-- Yes.

Because one of the difficulties, I suggest, that administrators would face in that circumstance, is that the practitioners, nurses and doctors alike who are asking to become involved in those things are already themselves very busy with their workloads?-- Yes.

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And because of that and their focus on trying to deal with the problems immediately at hand, at times are resistant to putting time into developing those processes as they're given to them?-- Yes.

And so it would be fair to say that it would be impossible to expect that when clinical governance at a hospital has come to a halt, that the new system or a new system and an effective system can be brought into being in a short period of time?-- No, it's not a quick or easy thing to do.

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And all of that for a Director of Medical Services is aside, is it not, from a workload that is more than one person can handle; is that right?-- Well, it's part of the workload, but it combines with everything else to be more than a job for one person, yes.

Yes. But even, I suggest to you, for a Director of Medical Services coming into a hospital where there is an effective clinical governance program already in place, the job is very demanding, isn't it?-- Yes.

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And even then, is a job that is more than one person can handle on their own?-- Yes.

That's, in effect, what Dr Keating was complaining to you

about in that conversation, wasn't it? He wasn't just complaining about not having enough time to do the credentialing and privileging, he was complaining about his entire circumstance?-- Yes, he had indicated that he had a very heavy workload commitment.

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Now, there wasn't anything you could do about that, Mr Leck, I suggest, because again, budgetary constraints prevented you from relieving him by providing him with more assistance?-- Yes, earlier on, this had been recognised when we had Kees Nydam provide some assistance, even before Darren started work, but there was nothing further we could do, no.

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Do you have any knowledge of what now is in place at Bundaberg Hospital in terms of staffing to manage patient safety issues?-- No.

Could I ask you now about the peritoneal dialysis catheter audit? That document that you can recall finding on your desk at some time?-- Yes.

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I understand what you've said in your evidence about now not being certain which of the two exhibits it was-----?-- Yes.

-----that you were left with at that time. Now, at the moment, your evidence remains that it was in the first half of 2004 that you saw that document?-- Yes.

And in terms of how you time that or identify the timing of it, that's because of its relationship, your recollection of the relationship of the commencement of the Baxter Program with respect to seeing that document?-- Yes.

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Now, was it the Baxter Program had started or that the Baxter Program started after you received that document?-- My recollection is that it started after but I don't think it was long after.

All right. And when you say "it started after", do you mean by that that a patient utilised the Baxter Program, shortly after you saw that document for the first time a patient utilised the program?-- My recollection is that I'd seen some correspondence about the Baxter Program in the middle of the year and it wasn't long after that that a patient had utilised it, but I can't be exactly certain.

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All right. Or can you, with any certainty, place when it was that you saw the document compared to those events?-- As I said, in the middle of the year, I thought it was June.

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Yes, but was it after you saw the correspondence but before the patient utilised the Baxter Program?-- I don't know.

See, I suggest as a possibility to you that when you saw the document, you - and made inquiry of Dr Keating about it, the reason why you - I'll withdraw that, I'll start again. The reason why you have this in your mind in terms of the timing of seeing the document compared to the Baxter Program might be

because when you spoke to Dr Keating about the document, one of the things you came to appreciate was the fact that that the Baxter Program had been put in place meant that these procedures weren't being done at Bundaberg anymore at the hospital?-- I had to sign off on this happening, but I do recall that the patients had started before all of the documents - before it had been signed off, but I can't recall anymore than that.

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Yes. Again, can you place the sighting of the document compared to you signing off on the Baxter program or knowing of patients going through?-- No.

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No. Thank you. Mr Leck, with respect to the doctors that were interviewed after the receipt of Ms Hoffman's complaint, I suggest to you that the choice of which doctors were to be interviewed was yours, that you directed Dr Keating as to who he was to arrange interviews with?-- No.

10

You maintain that it was he who chose which doctors were spoken to?-- Yes.

Would you accept that if you thought it appropriate for there to be other doctors spoken to in addition to those arranged, that that was entirely a matter for you?-- Yes, I could have done that.

With respect to the attendance by Ms Hoffman upon you in March of 2004 in which she brought a document-----?-- Yes.

20

-----to you and spoke to you in the terms that you describe, I suggest to you that you did not speak to Dr Keating specifically about that complaint by Ms Hoffman?-- That's not right.

That whilst you had some conversations with Dr Keating prior to October of 2004 about Ms Hoffman and the ICU staff having problems with Dr Patel and vice versa, that you never discussed with Dr Keating specifically that attendance by Ms Hoffman?-- That's not correct.

30

And that you would not have done because, I suggest, you took the view that unless Ms Hoffman was prepared to formally lodge a complaint, you would not take the matter up with anybody?-- That's not correct.

You've said, and I think it was concerning the conversation that you believe occurred in March of 2004, but whether it was then or another time, that Dr Keating told you when you addressed matters with him about concerns of Ms Hoffman prior to October of 2004 about Dr Patel that Dr Keating became short with you, told you that it was purely a personality matter and that Dr Patel would leave if those matters were not - or if those matters were persisted with and not resolved. Is that a fair summary of it?-- If the - I think he said if things keep going like this, then Dr Patel will leave and Jim Gaffield won't be far behind.

40

Did you ask him what this was about concerning Dr Gaffield?-- No, I didn't.

50

What did you think it was about?-- That having one surgeon isn't sustainable.

Do you think that this conversation that you're recalling was one that occurred after Ms Hoffman's complaint in October of 2004?-- No.

1  
Were you aware in late 2004 or early 2005 that Dr Gaffield was likely to leave the hospital at some time in the near future?-- I became aware of that. I'm not exactly sure when it was.

Well, you were unlikely to be aware of it in, say, March of 2004; would that be right?-- Yes.

10  
See, after Ms Hoffman's complaint in October of 2004 through until January, when you met with Dr Patel on the 13th of January, Dr Keating was concerned to see that Dr Patel be apprised in some detail about the complaint that had been made against him, wasn't he?-- Yes.

20  
But you, and I'm not challenging your reasoning in asking these questions, Mr Leck, but you it's right to say, isn't it, took the view that he should not be told of that detail?-- Not at that point, not until an investigation had been arranged, yes.

Yes. Your view was that it was best for the purposes of the smooth running of the hospital that those matters - the subject matter, the detail of the complaint and, indeed, the fact of the complaint, be kept as confidential as possible in the meantime until the investigation was commenced?-- Yes.

30  
So that as of the 13th of January, having consulted with Dr FitzGerald, for the first time some subject matter of the complaint was broached with Dr Patel, was it?-- On the 13th of January, yes, he was broadly told about the complaint.

Yes. Even then not told the specifics but just broadly?-- Yes.

At that time Dr Keating wanted or thought it best that Dr Patel be given the detail of the complaint?-- I think he did, yes.

40  
And prior to then he had been agitating for that to happen, hadn't he?-- I think he may have spoken about it once or twice, yes.

Now, as far as you were aware, Dr Patel had some knowledge of there having been a complaint about him at that time, didn't he?-- When, sorry?

Prior to the 13th of January?-- I don't - I'm not aware that he knew anything about it until then.

50  
See, my proposition to you is that to the extent that Dr Keating said anything of the kind that you've attributed to him about Dr Patel leaving and Dr Gaffield not being far behind, that that might have been a comment made in the context of Dr Patel not being afforded the courtesy of being told the fact of the complaint and the detail of the complaint that had been made against him?-- I have - to - I don't - I don't think so but I'm not quite sure what you mean.

Well, what I'm suggesting to you is if Dr Keating was agitating after the 22nd of October 2004 through until the 13th of January for Dr Patel to be told of the fact of the complaint and the detail of the complaint, that that might have been a reason for him to express a comment along the lines of, "Look, if we don't give him this information, then there's a risk that once he finds out about it, he'll end up leaving"-- I don't recall that because I - Dr Patel wasn't told anything that I'm aware of until the 13th of January.

And I suggest to you that that sort of a scenario would coincide with the situation where Dr Gaffield was known to be likely to be leaving the hospital around that time too?-- Well, I don't agree with your-----

Underlying proposition?-- No.

All right. In any event, leaving aside the specific words that may have been said, do you take it that all Dr Keating was talking about was treating Dr Patel as an employee fairly on the one hand because it was appropriate as an employer to try and deal with internal conflict between employees and put it to rest?-- He - the comment was made in the context of it being a personality conflict between Toni Hoffman and Dr Patel. I don't know - the conversation was short. I don't know what Dr Keating's views were other than what I've said.

Thank you. You were asked some questions yesterday about Dr FitzGerald's visit to Bundaberg on the day he carried out his investigations in February 2005?-- Yes.

You recall meeting with Dr FitzGerald on that day?-- Yes.

Did you meet with him at any time alone?-- Yes.

Did you meet him with-----?-- Oh, with - actually, I think it would have been with Sue Jenkins, his assistant, not just with me.

Oh, sorry. Thank you. Did you meet on any other occasion with him on that day in the company of others?-- Yes. I met with him, Darren was there, Sue and Dr FitzGerald and myself. I can't recall if there was anyone else there.

All right. Do you have a recollection of the matters that were discussed during that meeting?-- Not a great deal of recollection. There was discussion - I do recall that there was discussion around patient satisfaction because I think we had indicated that we would provide Dr FitzGerald with a copy of the Press Ganey Public Satisfaction Report. There was also a discussion about complaints but I can't recall the detail of what that was.

Well, can I suggest to you that Dr FitzGerald asked about that matter and that the response that was given to him was that there had been some patient complaints but they were minor and had been resolved?-- To the best of my knowledge, I think

that's probably right but I don't have a clear recollection of it.

1

All right. Do you recall him being told that there were no medico legal claims other than the Bramich claim, which he presumably already knew about from the documents?-- Yes.

COMMISSIONER: Did he ask about complaints by nursing staff?-- Not specifically, not that I can recall.

10

Or other people in the hospital?-- No, I don't think so, no.

Did either you or Dr Keating volunteer that?-- No.

MR DIEHM: Would you have taken him to know of details of complaints made by nursing staff within the hospital from Ms Hoffman's letter of and from other documents that had been provided to him?-- Yes, he'd been provided with all of the material from Toni Hoffman's letter of the 22nd and the subsequent letters that had come in around that time and, also, the further letters that had come in in early January.

20

Concerning the management of the boy, the 15-year-old boy?-- I can't remember all the details. There was several of them.

But there was several lots of nurses' complaints relating to different patients from prior to December of 2004 as well as some in January of 2005?-- Yes.

You understood him to have those?-- Yes.

30

COMMISSIONER: But as we now know, Mr Leck, there were many more than that, weren't there, extending back over more than a year, close to two years?-- Yes.

Did he have those, do you know?-- Not to my knowledge.

Did anyone volunteer those to him?-- No. Not to my knowledge.

40

MR DIEHM: Mr Leck, I'll pursue that with you. Do you know of any particular complaints from nursing staff that he had not been apprised of?-- No.

And were you aware of him having provided a list of staff that he intended or desired to speak to on this day in Bundaberg?-- Yes.

You had seen that before his arrival?-- Yes, I think I had, yes.

50

Were you aware of there being any relevant staff who might have information by way of complaint or knowledge of complaints that weren't on that list?-- No.

Thank you, Commissioner. Thank you, Mr Leck.

COMMISSIONER: Thank you, Mr Diehm. Mr Boddice.

MR BODDICE: Thank you, Commissioner.

1

CROSS-EXAMINATION:

MR BODDICE: Mr Leck, if I could just take up that last point in relation to the meeting with Dr FitzGerald?-- Yes.

10

The meeting you're referred to occurred on the afternoon of the 14th of February?-- I don't know the exact time but I think that's right.

Well, your understanding, it was after Dr FitzGerald and Ms Jenkins had interviewed a number of people?-- Yes.

And you were asked about - you said that you recall there was a question about-----?-- No, actually, I'm not sure about that. I met with Dr FitzGerald and Sue Jenkins in the morning before they commenced and then I met them again with Darren and perhaps others. It probably was after they'd seen other people, yeah.

20

Was your understanding you met them in the morning, in effect when they first arrived at the hospital?-- Yes.

And that was an individual meeting with you?-- Yes.

30

And then later - they then went away and interviewed other people as you understood it?-- Yes.

And then in the afternoon they came back and met with you and Dr Keating?-- Yes.

And you said that during that meeting there was questions asked in relation to patient satisfaction?-- Yes.

40

And about patient complaints?-- Yes.

I suggest to you that the answer that was given was that there weren't any patient complaints?-- No, I can't - I can't recall that being the case. I do recall prior to - prior to Dr FitzGerald coming that I had looked through a - the most recent volume of - of our complaints file and I hadn't located anything on that which related to Dr Patel. So, I may have indicated that.

50

Mmm. And that certainly appeared to be your understanding - remember yesterday you were taken to the e-mail that occurs to SDLO after there has been some publicity in March?-- Yes.

And you there have a reference to "Dan" and the fact that you weren't including that there were no patient complaints because you had found one?-- Yes.

So wouldn't that be consistent with the fact that up until you'd found that one in March, your understanding was that there were no patient complaints?-- Yes.

1

So you would expect that that being the case, that's the answer that would have been given to Dr FitzGerald if he asked you that question in the afternoon about patient complaints?-- It could be, yes.

And you certainly accept that he did ask about patient complaints on the afternoon of the 14th of February?-- Yes.

10

And just in relation to that e-mail that was to Mr Bergin, was the context of that that you had contacted Mr Bergin about the fact that you wanted to put in a response to the newspaper to the - to the article that had appeared about Dr Patel?-- Yes, as per my discussion yesterday.

And in the course of that had there been a discussion about, "Well, have there been any patient complaints against Dr Patel"?-- Yes, there was some discussion about that.

20

And your indication at that time to Mr Bergin was that there weren't any?-- Well, I think I had indicated that I had looked - looked in that volume and I hadn't found any, yes.

And so, was there a discussion about that being included, in effect, in the response that was to go into the newspaper, that there weren't any patient complaints?-- Yes.

30

But what had happened was that between that conversation and when you were doing the response, you had discovered a complaint?-- Yes.

And so, you were e-mailing Mr Bergin to let him know contrary to the earlier conversation you've discovered a patient complaint, so you haven't included that in the letter?-- Yes, I was - I was concerned about including something like that in the letter.

40

Yes. But that was because your earlier conversation had been in the context of there had been no complaints but subsequently you had found a complaint?-- Yes.

And so, you were in effect updating him on the position?-- Yes.

You were asked some questions also in relation to your conversation with Dr Patel on the 13th of January when you outlined the nature of the allegations?-- Yes.

50

Do you recall that? And the question was put to you that this was after your discussions - after discussions with Dr FitzGerald?-- I'm not sure when I - I think the first time I spoke to Dr FitzGerald was the 17th of January.

That's so. That's what I wanted to just check with you, that in fact you hadn't spoken to Dr FitzGerald by the 13th of

January, had you?-- No.

1

You had e-mailed Dr Scott because you knew Dr FitzGerald was still away on leave?-- I had been in contact with Dr FitzGerald's office in December and had been told that he should be able to - he was aware of the situation and should be able to assist.

Mmm?-- But that he was about to head off on leave.

10

That's so. But when you spoke to Dr Patel on the 13th of January, you still had not spoken to Dr FitzGerald?-- No.

And you spoke to him on the 17th of January and subsequently sent him an e-mail in relation to the matter?-- Yes.

Well, actually, I think you said - we might just check that date because I think the chronology shows it to be the 20th of - no, you're correct, it is the 17th of January you telephone Dr FitzGerald. Is that your recollection?-- Yes.

20

And the 19th of January is when you send down the brief, the e-mail with the attachments?-- Yes.

Yesterday, Mr Leck, you gave some evidence in relation to your conversation with Dr Mattiussi?-- Yes.

Now, you had contacted Dr Mattiussi as a fellow District Manager to get some names of people who could conduct a review for you?-- Yes.

30

And had you in that context raised this issue of the performance of oesophagectomies and Whipple's procedures?-- Yes.

And had you raised that in the context that one of the issues was whether those procedures should be being performed at a hospital such as Bundaberg with the facilities that Bundaberg had?-- Yes.

40

And you indicated yesterday that Dr Mattiussi expressed concerns about Whipple's procedures being performed at Bundaberg?-- Yes.

And was that in the context that Dr Mattiussi suggested to you that you should look for somebody like an anaesthetic intensivist to look at what is the capabilities of the hospital?-- I was looking for somebody to conduct an investigation into the complaint.

50

Yes?-- And part of that concerned intensive care, and it had come from intensive care so I felt there needed to be somebody who had that experience.

But was it in that context that Dr Mattiussi - you said he gave the name of Dr Alan Mahoney as a person?-- Yes.

Was it in that context he suggested Dr Alan Mahoney because he

is a person who could look at it from an anaesthetic intensivist point of view as to the capabilities of the hospital?-- Yes, and because I think he had some regional experience.

1

Now, you initially, when you gave evidence, said that you couldn't remember Dr Mattiussi mentioning oesophagectomies?-- Yes.

And then subsequently you said you think he did mention oesophagectomies, that they should be okay?-- Yes.

10

Or something to that effect?-- Yes.

Are you sure about that?-- To the best of my knowledge, yes.

You see, when you gave your interview - do you recall when you were interviewed in June with the Commission?-- Yes.

This appears at page 14. You said, "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, that oesophagectomies being done, and it appeared that his view was consistent with Dr Keating's." Was it a situation where he specifically raised about Whipple's but in fact didn't say anything about oesophagectomies so you interpreted that to mean, "Well, he doesn't have a concern about oesophagectomies", as opposed to his saying they should be okay?-- I raised - I specifically raised the issues of oesophagectomies. As I said, to the best of my knowledge he did comment but I am - I am a little uncertain.

20

30

So you accept that it may be that he said - he didn't say anything about the oesophagectomies; he specifically commented on the Whipple's procedures being done?-- My interpretation - well, certainly, the impression that I had was that oesophagectomies was part of the discussion. It wasn't - what you're proposing would suggest that it was left out and that isn't the case.

40

No, what I'm suggesting to you is that you may well have mentioned both procedures, that is oesophagectomies and Whipple's procedures?-- Yes.

But Dr Mattiussi in response specifically raised concerns about Whipple's procedures and suggested Dr Mahoney because the issue was the capability of the hospital to do such procedures and there was no discussion on his part about oesophagectomies?-- I can't be - I can't be sure.

50

And that, because there was no comment, you have been left with the impression, well, they must be okay rather than his actually saying they're okay?-- I know I had a feeling of relief. I felt after talking to Mark, that Darren's views were right. So I had been a little anxious but after speaking to Mark, you know, that anxiety stopped.

1  
But that may have been because there hadn't been a discussion on his part about oesophagectomies, he had spoken specifically about Whipples procedures. So you were left with an impression. Do you agree with that?-- I can't be sure.

You can't be sure of the conversation?-- Yeah, I can't be sure of the detail.

10  
All right. You were asked some questions in relation to risk management and you were also asked some questions about the culture, you may recall, in respect of Dr Woodruff's report?-- Yes.

20  
Now, is one of the difficulties with the introduction of risk management that Queensland Health has been trying to introduce trying to, in effect, turn around a longstanding culture within doctors and nurses that if there is an admission of an error, that can lead to blame, be it in a legal context or otherwise?-- Yes.

And so there is an understandable - there has been this understandable view that you shouldn't admit an error because there are those consequences in terms of blame, be it legal or otherwise?-- Yes.

30  
And the point of the new risk management procedure that Queensland Health is seeking to introduce with adverse events and sentinel events is to get rid of this blame concept?-- That's correct.

And it is meant to be a blame-free system?-- Yes.

Where what is intended to be is to look at what happened and why it happened to ensure that it doesn't happen again, rather than focus on who did it and whether they should be held responsible for what they did?-- Yes.

40  
And, so, it is intended to encourage people, through the adverse event form, sentinel event form, to report incidents?-- Yes.

But to do so in the context of an openness, a frankness because it will be a blame-free type system?-- That's correct.

50  
And is one of the difficulties getting staff to accept that it will be blame free as opposed to somebody being held responsible for the incident that has been admitted?-- Yes.

And that's difficult, isn't it, Mr Leck, to get the staff to accept that it will be blame free?-- Yes, it is.

And is that one of the difficulties in the success of the adverse event/sentinel event form; it requires the staff to, of course, report the incident?-- That's correct.

And the system is one that any person, who either is involved

or witnesses the event, is supposed to put in an adverse event form or sentinel event form?-- That's correct.

1

But, of course, it is dependent on one of those persons doing so?-- Yes.

Before it can be brought to the attention of anyone?-- Yes.

And then is the structure one that is intended that there will be a root cause analysis of why it is that event occurred?-- The intention was that root cause analysis would be rolled out across the State but hadn't gone everywhere yet.

10

So that what would happen is that that would seek to identify ways in which a similar event could be prevented in the future?-- Yes.

And was it also the intention, through the adverse event forms and the sentinel event forms, that, in effect, you will get a central repository to see whether there is a trend, whether there is certain mistakes or errors that occur more frequently than others?-- Yes.

20

So that programs can be put in place to try and address that trend?-- Yes.

To ensure that the events don't happen in the future?-- That's right.

You were asked some questions by counsel assisting in respect of Dr Baker?-- Yes.

30

And do you recall you were asked some questions about whether you recall that Dr Baker had asked for a part-time position?-- Yes.

And you were shown a letter of request from him that he be able to go to half-time position?-- Yes, I think that's right, yep.

40

That was Exhibit 413, and I might ask if you would just have a look at it again, if you could. Do you see that? That was the letter that was shown to you?-- Yes.

And in the questioning it was suggested to you that neither of those requests were satisfied, that is the part-time position or the VMO position, do you recall that?-- Yes, yes.

I suggest to you that was not correct, that in fact a position was offered to him on a temporary part-time position as Director of Surgery?-- I can't recall.

50

Could you have a look at Exhibit 414?

MR FREEBURN: Commissioner, do you want one of these?

COMMISSIONER: No, I don't need one. Thanks all the same.

WITNESS: We don't apparently have a copy of 414.

1

MR BODDICE: I will put it up on the visualiser. Commissioner, this was the subject of evidence with Dr Baker at page 6397 of the transcript. This is a letter dated 12 June 2002?-- Yes.

You will see that it was confirming an offer of a temporary part-time position of Director of Surgery?-- Yes.

10

From 1 July 2002 through to the 14th of January 2003?-- Yes.

And you see it is a 40 hour per fortnight which would be a half time position, wouldn't it?-- That's right.

So when you gave the evidence and you said you accepted that in effect neither of those were offered, had you forgotten about this offer?-- Yes.

All right. Thank you. Could I ask you some questions about Dr Jayasekera and the position of Director of Surgery. You were on the selection panel?-- Yes, yes.

20

And, as you recall it, it was a unanimous decision of the selection panel that the Yugoslavian doctor would be offered the position of Director of Surgery?-- Yes.

And Dr Anderson and Dr Nydam were on the panel with you?-- Yes.

30

Was it also the decision - the decision - was the decision taken when the Yugoslavian doctor declined the position that the position should be readvertised?-- Yes.

And to your knowledge Dr Jayasekera did not reapply-----?-- Yes.

-----when the position was readvertised?-- I don't believe he reapplied.

40

And you were also aware that Dr Jayasekera had indicated that he wished to move closer to Brisbane to be with his family?-- Yes.

And that was your understanding at that time?-- Yes.

When the selection process was being undertaken?-- Yes.

You sent an email to Dr FitzGerald - and this forms part of GF something or other. I will put it up on the screen. Mr Leck, this is an email from yourself on the 29th of March 2005 giving an update to Dr FitzGerald?-- Yes.

50

Had Dr FitzGerald asked to be kept informed in relation to Dr Patel?-- Not that I recall.

All right. So you were just keeping - you were keeping him informed about what the position was with respect to

Dr Patel?-- Yes.

1

And you had advised Dr FitzGerald that Dr Patel was not going to remain at the hospital?-- Yes.

And that he was on leave at that time and would be leaving when his contract expired on the 31st of March?-- Yes.

You were asked some questions yesterday also in relation to whether you had told the zonal manager in relation to the complaints of Ms Hoffman?-- Yes.

10

And you indicated that you hadn't told Mr Bergin?-- Not until prior to his visit in - I think it was early February 2005.

Was your understanding that Dr FitzGerald had in fact contacted Mr Bergin to advise him that he had been asked to do an investigation?-- Yes.

And that he was going up to do this clinical audit in February and as a courtesy he had told Mr Bergin about it?-- Yes.

20

And that caused Mr Bergin to then contact you because Mr Bergin knew nothing about it?-- I don't think he contacted me but I received a copy of that email, so I responded-----

So-----?-- -----to the email.

-----you were aware Dr FitzGerald had told Mr Bergin?-- Yes.

30

And you then sent a brief to Mr Bergin at that point in early February?-- Yes.

Yes. Those are the only matters, thank you, Commissioner.

COMMISSIONER: Thank you. Mr Freeburn?

RE-EXAMINATION:

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MR FREEBURN: Just a few things, Mr Leck. Now, I just want to deal with a suggestion that was made to you on Monday that one of the options open to you was to, in effect, close down the surgery department and just deal with emergency patients?-- Yes.

Remember that suggestion being made to you on Monday?-- Yes.

50

What I just want to explore is what is the consequence for patients of that sort of step, if you were to just close down, effectively, the surgery department except for emergency patients? What's left? What do you stop doing? You stop doing elective surgery?-- Yes. I - I think approximately 50 per cent of our surgical cases are trauma and 50 per cent were elective surgery. So there would be lots of patients who

would have to travel elsewhere and - would have to travel elsewhere to have their procedure done and in my view there would be a delay. It is inevitable there would be further delays in having their treatment.

1

So am I right in thinking there is only two categories; there is trauma or emergency category 1?-- Yes.

And there is elective surgery being category 2?-- Yes.

10

What's - I gather patients having surgery that fall into the category of elective surgery have all sorts of types of operations?-- They do. There is - there are several categories of surgery, from urgent to semi-urgent and non-urgent. So some elective surgery is classified as urgent and it might become emergency if it is not dealt with quickly.

Right. So that sort of surgery would include cancer patients?-- Yes.

20

People having joint replacements?-- Yes, that's right.

Now, I gather there is a waiting list - there is a waiting list for people to have that type of surgery?-- Yes, that's correct. There is - after the patient is seen in outpatients, they are then put on to a - if they're assessed as requiring surgery, they are then put on to a waiting list and categorised in the way I have just described.

Right. So the effect of shutting down all but emergency surgery would be to effectively stop - lengthen those lists, the waiting lists?-- It would, yes.

30

It also has a financial consequence?-- For the hospital, yes. It wouldn't - the hospital would no longer be receiving elective surgery funding, so there would be flow-on effects across the board.

I gather that would be a fairly dramatic step, to effectively shut down surgery?-- Yes, it would be a huge step.

40

And I suppose it would mean that you were immediately - or the hospital is immediately in breach of its service obligations?-- Yes.

Would you take that step without consulting head office?-- No.

So I gather you wouldn't take that step unilaterally?-- No.

50

Now, I gather during most of the period we have been talking about in this Commission, there were two surgeons at Bundaberg Hospital?-- Two full-time surgeons, yes - two full-time general surgeons, yes.

And, so, the consequences are similar if one suspends one of the surgeons until you get him replaced?-- That's correct. The consequence would be that mainly emergency surgery could

only be done.

1

COMMISSIONER: There were no qualified surgeons, were there, at any relevant time we're talking about. There were Dr Patel and Dr Gaffield, neither of whom were qualified as specialist surgeons?-- No, they weren't qualified as specialist surgeons. Dr Gaffield became qualified, as I recall.

When?-- I am not sure.

10

Before or after you left?-- I am not sure.

MR DIEHM: It is canvassed in the evidence, Commissioner, of Dr Gaffield.

COMMISSIONER: I thought it was.

MR DIEHM: I can't recall the precise time.

COMMISSIONER: Thank you.

20

MR FREEBURN: Mr Leck, I just want to show you, with the advantage of this technology, a bundle of letters that have been supplied in the documents we got from the Commission. Conforming with the tradition of this Commission I have highlighted some parts of the documents. So if we could just start at the beginning. Now, this is a fairly early letter. I think the date - it will be '97. Yeah, '97. Now, I gather this is before your time, but if we can scroll down a little bit, it is a complaint by Dr Anderson about the effect of the waiting list?-- Yes.

30

And this patient had cancer and Dr Anderson is complaining that delayed diagnosis, which is to do with the delayed waiting list, resulted in her having some further problems?-- Yes.

Can you just turn to the next one? This is again a department of surgery letter and it is by Charles Nankivell, who is the staff surgeon, and he is expressing deep concern at the effect of the waiting list and, again, in relation to a cancer patient?-- Yes.

40

And talks about it as being a repetitive problem?-- Yes.

Just have a look at the next one. This is to Dr Wakefield, who was then the Acting Medical Superintendent and it is from Dr Nankivell. Again he is complaining about the waiting list and a colonoscopy that was delayed a year longer than scheduled?-- Yes.

50

And in the meantime the cancer had progressed significantly?-- Yes.

And he expresses the view that the delay in diagnosis contributed to a terminal illness?-- Yes.

And, again, it is a complaint about the waiting list?-- Yes.

Next letter. By this time we're talking in your period, this is '99?-- Yes. 1

You were at Bundaberg?-- Yes.

And this is again a complaint. We will just see which doctor it is. It is again Dr Nankivell?-- Yes.

And he again complains about the unsafe length of time patients are having to wait to see a surgeon?-- Yes. 10

He talks there in the second paragraph about the category system of classifying patients, category 1, 2 or 3?-- Yes.

And if you read it - did you see this letter at the time?-- Yes.

It is a letter addressed to you?-- Yes. 20

But he is saying, effectively, that the categorisation system doesn't work because - because of the lengthy waiting list, even category 1 patients are having to wait?-- Yes.

And you see there he says, "This problem often involving a delay in cancer treatment."?-- Yes.

He says, "Invariably over time, some patients called 2" - meaning category 2 - "or even possibly 3, would turn out to have a cancer unbeknown to us"?-- Yes. 30

So that is a continual problem that you had in your hospital, the waiting lists were lengthy leading to problems with patients?-- Yes.

Can we have a look at the next one? If we just see who this letter is from. It is again from Dr Nankivell. He is complaining there about seeing patients at the clinic and he complains that in a two-hour period he has 28 patients to see. And rather than concentrate on what we have been dealing with in the previous letters, which is adverse consequences for patients, he is effectively saying that there is a problem in the clinic?-- Yes. 40

Do you remember that being a problem in the hospital, that is that the patients were having to wait, they were getting irritated and grumpy, causing problems with staff?-- Yes.

Just have a look - I think there is one more. This is a letter to you from Dr Nankivell. This is a similar sort of problem that he is talking about, abuse of staff by patients in specialist clinical area and he suggests at the end some sort of video closed-circuit television because of the abuse being hurled at staff. Is that right?-- Yes. 50

Do you remember that being a problem at the hospital?-- Yes, it was.

So just to summarise, the need to get through the waiting lists was important from a staff point of view?-- Yes.

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And important from a patient point of view?-- That's right.

And when we're looking at elective surgery, we're really looking at surgery in relation to cancer and a whole host of other illnesses?-- Yes.

And - all right. Commissioner can, can I tender those documents as a bundle, please?

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COMMISSIONER: Yes, certainly. That will be Exhibit 480.

ADMITTED AND MARKED "EXHIBIT 480"

MR FREEBURN: Now, Mr Leck, you may remember being asked some questions about Dr Rashford and his email?-- Yes.

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Remember those questions? You were asked by several people?-- Yes.

And at some point there have probably been various editions of it but there had been a sentinel event report form. Would you have a look at this sentinel event report form? Now, just have a look at that document. Is it right that there are various editions of that sentinel event report form?-- There was a change in the policy relating to sentinel events, so, yes, it would have changed over time.

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Is this the later one or the earlier one? Can you place this particular form? If we scroll down a little bit, would that help you?-- I am not sure. I think it would have been the later one but I am not sure.

But the list on that form is a list of what's regarded by Queensland Health as sentinel events?-- Yes.

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Right. And I gather there are other pages to that document, but that at least defines what Queensland Health regarded as a sentinel event?-- Yes.

I will tender that document. I should tender the other page to it.

COMMISSIONER: All right. That will be Exhibit 481, sentinel event form.

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ADMITTED AND MARKED "EXHIBIT 481"

MR FREEBURN: I gather the patient that Dr Rashford was talking about lost his leg?-- Yes.

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It was not - not in the category of an unexpected death, is that right?-- No.

And I gather that patient - that patient's treatment straddled the period from about Christmas Eve to after new year?-- I understand that's right.

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And Dr Patel really only dealt with the initial treatment of this patient?-- As I understand, yes.

Right?-- I am not sure - I am not sure whether it was Dr Gaffield or Dr Patel that dealt with the initial treatment of the patient.

But Dr - do you remember when Dr Patel went on leave?-- Yes, he did go on leave, yes.

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When was that?-- It was over the Christmas period. Look, I don't know-----

All right, if you don't know, that's fine. Now, do you remember the email that Mr - that Dr Rashford sent? Do you remember that?-- Yes.

And Dr Rashford was basically saying that he was looking at that - at the treatment of that patient from his own organisation's point of view?-- Yes.

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And he asked, effectively, the Bundaberg Hospital to look at its treatment of that patient?-- Yes.

Now, I want to take you to the issue of - do you remember you were asked some questions about the meeting with staff, and the email refers to some firm and scary messages?-- Yes.

And one of the - you had a concern about the information that had been leaked, and I think you told us in evidence that the concern was that it breached - the disclosure of patient details breached the Code of Conduct?-- Yes, that's right.

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Ordinarily, of course, disclosing patient - sorry, was it in your mind, at the time that you met with the staff and at the time you wrote that email, that disclosing patient details was also a breach of the law?-- Yes, a breach of the Health Services Act.

And was that your principal concern?-- Yes. Breaching patient confidentiality is viewed extremely seriously.

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And that's what you - is that what you were referring to when you talk about "on dangerous ground" in the email?-- I would need to just check the email again. Yes, that's right.

Thank you, Commissioner.

COMMISSIONER: Thank you. Mr Andrews?

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

COMMISSIONER: Thank you. You're excused from further attendance, Mr Leck. Thank you for coming?-- Thank you.

WITNESS EXCUSED

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COMMISSIONER: We'll now adjourn-----

MR BODDICE: Commissioner, could I just raise one matter?

COMMISSIONER: Certainly.

MR BODDICE: It's a question of submissions?

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COMMISSIONER: Yes.

MR BODDICE: And I'll have my instructing solicitors write, but we are in a position because the evidence has finished today, that I cannot see how we could achieve the date on Friday the 21st and we seek an extension until next Wednesday which is 26th.

COMMISSIONER: Yes.

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MR BODDICE: Which would be effectively - I understand there's some evidence to be called Friday, but effectively, a week from the evidence finishing.

COMMISSIONER: Mmm.

MR BODDICE: But we would ask for an extension until the 26th in order to be able to put those submissions in.

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COMMISSIONER: I'm going to give some further directions really about exchanging submissions and so on, and I thought I might give those tomorrow, if you'd like to raise that then.

MR BODDICE: All right, I'll do that.

MR DIEHM: Commissioner, on that topic, I had been circulating some draft directions around the various counsel. What I might do is incorporate them into a document that I forward to the Commission for your consideration before you make those directions.

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COMMISSIONER: All right, you'll do that today sometime?

MR DIEHM: Yes, indeed.

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

MR MULLINS: Commissioner, can I raise one matter?

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COMMISSIONER: Certainly.

MR MULLINS: It's in respect of the submissions: I raised two weeks ago that of our team of five, four will be away on Thursday and Friday of the week.

COMMISSIONER: Yes.

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MR MULLINS: And-----

COMMISSIONER: You've had weeks, of course.

MR MULLINS: We have.

COMMISSIONER: As Mr Boddice.

MR MULLINS: Yes. We pointed out that the difficulty would be finalising at the conclusion of the evidence the two days when the majority of our team will be out of town.

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COMMISSIONER: Yes.

MR MULLINS: We'll be in Cairns, the Internet access we have is not broadband Internet access so it won't be fast, we'll have difficulty accessing material. Short of transporting all of the material to Cairns to work on while we're there, if we could ask to simply make it for 5 p.m. Wednesday?

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COMMISSIONER: Yes.

MR MULLINS: We have a particular problem, slightly different from Mr Boddice's but I'm just wanting to - of course, I'm not going to be here tomorrow given that I will be-----

COMMISSIONER: But someone can be here to represent you, and at least I'll have heard what you said and I'll give a direction with respect to it tomorrow.

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MR MULLINS: Thank you, Commissioner.

MR ASHTON: Commissioner, we're not formally asking for an extension but if there's extra time, I'd hate to miss out.

COMMISSIONER: Oh, if I extend it, I'd probably extend it for everyone.

MR ALLEN: I would be asking for an extension in similar terms please, your Honour.

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MR BODDICE: I do not stand alone.

COMMISSIONER: No. All right.

MR ANDREWS: Excuse me, Commissioner?

COMMISSIONER: Yes.

MR ANDREWS: What time tomorrow?

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COMMISSIONER: Does 9.30 suit everyone?

MR ANDREWS: It would, Commissioner.

COMMISSIONER: Yes, 9.30.

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THE COMMISSION ADJOURNED AT 11.03 A.M. TILL 9.30 A.M. THE FOLLOWING DAY

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