

there not?-- Yes, there is.

If you go to the next page, 208, that page isn't signed by you?-- No, it's not.

There's another page after that assessment form, it's actually two pages, is it not?-- Yes, it is.

And that's been completed by you in handwriting or with ticks?-- Yes, it has.

And your signature appears at the foot of page 210?-- Yes, it does.

And you by that signature and your date thereof were attesting to the truth of what appears on page 210 of the bundle and the previous page 209; correct?-- I was - I believe I was attesting to the fact that I had completed it.

You were attesting to the truth of what you'd completed on those two pages?-- I would - I respectfully disagree. I attest the fact that I completed it and that was my handwriting and that was my assessment.

Okay, I'll come to it directly. I suggest to you that having regard to what was in your mind by way of information from the 22nd of October or thereabouts of 2004 when you received the Toni Hoffman letter, up until the time when you completed this document for the Medical Board, what appears, what appears on page 207 where you signed it and what appears on pages 209 to 210 is a tissue of lies; what do you say to that?-- I disagree with that.

I'll take you to it in detail. Go to page 207. Again, your signature appears at the foot of that page, does it not?-- Yes, it does.

There's a recitation there of the surgical services which it's intended Dr Patel would provide at the Bundaberg Hospital?-- Yes.

Is there not?-- Yes, there is.

And then the last sentence reads as follows, "Dr Patel has been in this role for the past 12 months and his performance is rates as excellent."?-- Yes.

Now, obviously the words "rates" should read "rated"; is that not so?-- Yes.

Having regard to what information you knew about from the 22nd of October 2004 and as reflected in your written ruminations of early January 2005, it is a lie to suggest that in your opinion Dr Patel could be a person whose performance in this role could be described as or rated as excellent?-- It is not a lie.

COMMISSIONER: What is it?-- I acknowledge that it has

over-rated him dramatically.

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It's untrue, isn't it?-- I do not believe it was untrue at that time based on a number of allegations from Toni Hoffman with some primary corroboration, and yes, my thoughts about him and there was two aspects, his clinical competence and his interpersonal relationships, and I gave greater emphasis to the problems related to his interpersonal relationships as opposed to the clinical competence causing the problems, but I over-rated him and I acknowledge that I have made a mistake in over-rating him but I was - in no way was I aiming it to be a lie.

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Your opinion expressed there, that his performance was excellent, is just untrue. That was not your opinion at the time?-- I acknowledge that my opinion was - written down here has not translated into this and that the word "excellent" is wrong. 1

It was not your honest opinion that his performance was excellent?-- Yeah, my honest - my honest - my opinion was not - ~~that he was not excellent, yes.~~ 10

MR DOUGLAS: If you turn to page 209, you have already agreed with me that your ticks appear in the various boxes there?-- Yes.

See that?-- Yes.

And those reading it can see there is a series of boxes, about 10 in number, which comprehend, it seems, in broad terms matters under three headings: clinical?-- Yes. 20

Communication?-- Yes.

And personal and professional?-- Yes.

Now, in terms of your ratings of him, the highest he rates is performance: exceptional?-- Yes.

And the lowest mark he got from you was "consistent with level of experience"?-- Yes. 30

The next one down from "consistent with level of experience" is "requires further development", is it not?-- Yes, it does.

The next one is "requires substantial assistance", below that?-- Yes.

But you didn't tick him under those last two under any of the box headings?-- No, I didn't.

You have given him "clinical knowledge base", "performance better than expected". Was that your honest view?-- As I said in my statement - as I said in my statement, I have overrated him in all areas. 40

So you admit that all of these, having regard to what you knew, what I have taken you through today, was really an overrating with the possible exception of "teaching", would that be correct?-- I think it was.

Is that correct?-- There was a couple - teaching is one of them. 50

What's the other one?-- I think - I think was-----

Which of these is a correct rating having regard to the matters which you truly knew that you have told his Honour about this morning?-- Time management skills.

That's a correct rating, is it?-- I think that's in the fairly close.

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Anything else?-- And the teaching aspect.

You have already mentioned teaching?-- Yes. I believe that I have overrated all of these, some more or to a lesser extent. I acknowledge it does not match up with what was said previously.

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Why would you want to misrepresent the position to the Medical Board?-- I did not wish to misrepresent the position to the Medical Board.

Did you think this was just a nothing document and really the Medical Board didn't deserve to be told the truth?-- The Medical Board deserved to be provided information. At that stage we only had an amount of - information had not been verified in a way that I believe was appropriate that could be fully provided to the Medical Board.

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COMMISSIONER: But by and large these ticks were, as you know, untrue - as you knew at the time, untrue?-- Commissioner, I believe that I have overrated him in these areas. As I said previously-----

That's using a euphemism-----?-- They were isolated.

-----there is none. It was untrue, wasn't it, and you knew it to be untrue, what you said there?-- No, I did not believe it was untrue.

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All right?-- What I do believe is I have overstated it and that I was looking at a large period of time. There were an isolated number of situations which had been provided but there had also been a large number of patients he had looked for and cared for, multiple situations Dr Patel had been involved in, and I was trying to give a fair and accurate reflection of the totality of work that he did.

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MR DOUGLAS: But you concede that you overrated him across the Board almost uniformly, nonetheless?-- Yes.

Go to the next page. There is a heading "Supervisors must comment on the following". So you understood you were the supervisor making these comments?-- Yes.

And the pro forma entry was "list strengths". Do you see that?-- Yes.

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Now, you read out to me what you have written there in your handwriting?-- "Dr Patel is a very committed and enthusiastic clinician who has continued"-----

Perhaps "to be"-----?-- "Has continued" - should be "to be a very effective member of staff and Director of Surgery. He has a very strong work ethic which is a model for others. Dr Patel is a willing and effective teacher who has continued

Exhibit No.: 454

QXCI XN: MR. DOUGLAS...

Transcript - excerpts: P. 6874-5, 6880-3

6880-3

13/10/02

R. Douglas, SC

and it may be that you put these in later, I'm not sure, do you see there there's an item about six paragraphs up from the bottom, "As per conversation with DM" - that's Mr Leck - "of 4th January 2005, I informed him of these thoughts about Dr Patel."; do you see that?-- Yes.

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And the next paragraph, "Reinforced above advice to District Manager on 10th January 2005."?-- Yes.

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Can I suggest to you therefore that-----?-- 5th of January.

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-----by the 4th or 5th January 2005 you were of the views which were expressed above that paragraph commencing where you referred to the conversation with Mr Leck on the 4th of January 2005?-- Yes.

Coming back then to the top of the page; you've read it?-- Yes.

On the 4th of January 2005, you were of the opinion as the Director of Medical Services Bundaberg Hospital that Dr Patel over-extended himself in performing a limited number of certain major sub-specialty operations?-- Sub-specialty operations, yes.

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You were also of the opinion on that date that Dr Patel delayed transfer of seriously ill patients to Brisbane?-- Yes.

You were also of the opinion on that date that Dr Patel's manner is perceived by many staff at Bundaberg Hospital at all levels as being arrogant, abrasive, rude and potentially abusive?-- Yes.

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You were also of the opinion on that date that Dr Patel had multiple responsibilities with the result that there was potential for fatigue and errors in his judgment?-- Yes.

Can I go down under the heading "Summary" therefore and put the same proposition to you, by reference to that date, I suggest to you that on the 4th of January 2005, you were of the view that Dr Patel was a very knowledgeable surgeon with many years experience of general surgery?-- Yes.

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You were of the opinion that whilst he may have been probably very good to excellent technically in his previous career in the United States, he was now a good to very good surgeon?-- Yes.

You were of the opinion, however, that he had not maintained currency in some major thoracic and abdominal procedures or in all aspects of care of critically ill patients?-- Yes.

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You were of the view that he had a positive attitude, a very positive attitude to work?-- Yes.

You were of the view that his cumulative work, stress and fatigue plus multiple responsibilities contributed to him

being a specialist surgeon who had more potential to make errors of judgment in clinical care, particularly in relation to seriously ill patients?-- Yes.

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You were of the view that Dr Patel was unpopular and potentially without the support of many clinical staff at the hospital; correct?-- Yes.

You were of the view that you were uncertain whether or not Dr Patel would be able to modify his behaviour to reduce that tension that had developed with staff; correct?-- Yes.

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You were also of the view that there were a large number of staff actively undermining the continuing efforts of Dr Patel to provide a general clinical service to the people of Bundaberg?-- Yes.

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That summary contains a mixture of the positive and the negative; is that fair to say that?-- Yes.

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I suggest to you that those aspects of it that are negative are such that you as the Director of Medical Services ought have been moved to immediately cease his practice as a surgeon undertaking clinical surgery at the Bundaberg Hospital?-- I do not believe so, as I said previously, I believe that there should have been further restrictions placed on his situation and review of his responsibilities to reduce his situation and also to ensure that fatigue, the fatigue factor was reduced as much as possible.

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You were concerned - I'll put it another way. You were of the view at this time on the 4th of January 2005 that Dr Patel's clinical judgment was flawed?-- I was of a view that there were a number of stressors which could lead to his clinical judgment being impaired, particularly in relation to seriously ill patients.

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Whatever the genesis of it, whether it be stress, whether it be incompetence doesn't matter, you were of the view ultimately that his clinical judgment was flawed?-- I was of a view he could make errors in his clinical judgment, I did not believe that his clinical judgment total was - at that time I did not believe that his clinical judgment in total was, you know, as you've described.

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Were you prepared to tolerate him having the potential for errors in his clinical judgment, having regard to the features you identify?-- I was not prepared to tolerate that situation or prepared not to tolerate that situation without changing the situations which led to that situation. Now, in this situation I believe that there was ways to go about reducing the opportunity for errors to occur. Errors of judgment occur in clinical care to a smaller or lesser degree, but Dr Patel had that occur.

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Did you at any time prior to him ceasing, that is, Dr Patel ceasing at the Bundaberg Hospital, reduce his multiple responsibilities?-- Prior to him finishing?