

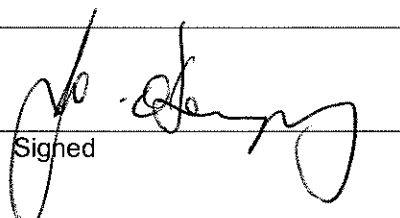
IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950


QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY  
NO. 2 OF 2005

AFFIDAVIT

I, JAMES PATRICK O'DEMPSEY of 160 Mary Street, Brisbane, Queensland, Executive Officer, Office of Health Practitioner Registration Boards state on oath:

1. My full name is JAMES PATRICK O'DEMPSEY and I am the Executive Officer of the Office of Health Practitioner Registration Boards. I have access to the books and records of the Medical Board of Queensland ("the Board") and I am authorised to make this affidavit on behalf of the Board. My qualifications and experience are set out fully in my statement to the Commission of Inquiry Number 1 of 2005 which is exhibit 28. I wish to provide this Affidavit to assist this Commission of Inquiry in relation to the administrative arrangements which the Board adopts in recognising distinctions between special purpose (area of need) registrations S135 *Medical Practitioners Registration Act 2001* ("MPRA") as opposed to the position of "deemed" specialist registration in an area of need pursuant to S143A of the MPRA.
  
2. In making this affidavit I refer to actual examples of both applications for special purpose registration generally in an area of need and also refer to an example involving the processing of an application for special purpose registration in a speciality in an area of need.
  
3. By way of background as far as any Public Hospital is concerned, depending upon its level and size, medical practitioners with the exception of interns and Junior House Officers are employed generally within particular departments. For example most public hospitals of sufficient size will have an emergency department. In that case for example there will be possibly a range of full time positions within an emergency department which may include Principal House Officers, Senior Medical Officers, Registrars, Staff Specialists and Consultants. A staff specialist or a consultant in an Emergency Medicine Department

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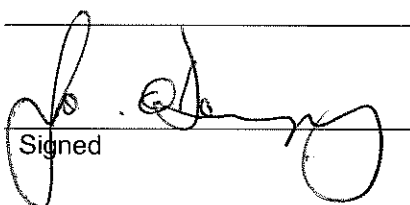
would be expected to hold specialist registration within emergency medicine. However a Registrar, a Principal House Officer and even a Senior Medical Officer (except in rare cases) would not hold specialist registration in emergency medicine even though the person might be working exclusively in that department. Whether a medical practitioner works in a particular department of the hospital is a decision to be taken by the hospital administration prior to advertising a position and following an application by a registered medical practitioner for the position. A Principal House Officer employed in an emergency department would thus for example be designated "Principal House Officer – Emergency" consistent with the position description and recruitment advertisement.

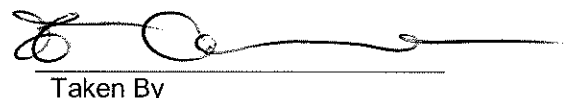
Examples of Special Purpose Registration (Non Specialist)

4. I will refer to examples of the Board's processing of applications for special purpose registration in an area of need. These examples pre date April 2005. It is important to highlight the fact that an application for registration in an area of need would not be processed unless all of the documentation required is produced. For instance if an area of need certification is received on its own, the matter would not progress any further unless and until the application for registration was received. Conversely if an application for special purpose registration was received without an area of need certification the application would not be further considered until the certification form was received.
5. All of the area of need certifications issued in respect of Public Hospitals in Queensland were issued by Queensland Health. The Board itself has no interest or involvement in whether an area of need is certified. The Board's only concern in this regard is the fact that an area of need certification is produced in respect of a special purpose registration application prior to further considering the application. If the area of need certification does not include certification for a specialist position the Board does not treat the application as in any way relating to an application to be a deemed specialist in an area of need.
6. Annexed hereto and marked "JPO-1" is a true copy of a certification for an area of need pertaining to a registrant to whom I will refer as "Dr S J" in respect of a position of a Principal House Officer within Obstetrics and Gynaecology, Redcliffe and Caboolture Hospital from 18/04/2005 to 17/04/2006. The hospital has not sought certification of a specialist position in applying for an area of need certification from Queensland Health.

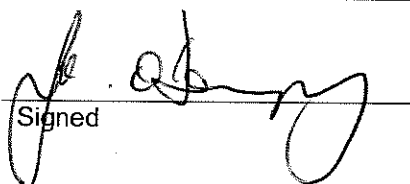
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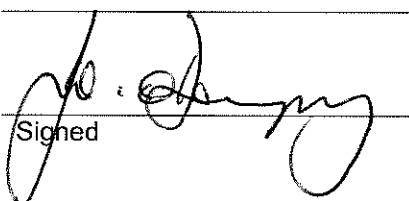
7. Annexed hereto and marked "JPO-2" is a true copy of the extract of the Board's minutes wherein it is noted among other things that the application for registration of Dr S J be approved for special purpose registration under section 135 to fill an area of need as a Principal House Officer in Obstetrics & Gynaecology at Redcliffe and Caboolture Hospitals from 18 April 2005 to 17 April 2006.
8. Annexed hereto and marked "JPO-3" is a true copy of the letter as sent by the Board to Dr J S dated 27 June 2005, which includes a true copy of the certificate of registration "*Special Purpose – Section 135*". I note that this particular correspondence includes the advice to Dr J S that "*Special Purpose Registration enables you to fill an area of need as a Principal House Officer in Obstetrics & Gynaecology at Redcliffe and Caboolture Hospitals...*" and further "*It is advised that you are not registered as a specialist.*"
9. Annexed hereto and marked "JPO-4" is a true copy of a certification for an area of need pertaining to a registrant to whom I will refer as "Dr N J" in respect of a position of a Principal House Officer within General Surgery, Redland Hospital, Cleveland from 10/01/2005 to 8/01/2006. The hospital has not sought certification of a specialist position in applying for an area of need certification from Queensland Health.
10. Annexed hereto and marked "JPO-5" is a true copy of the extract of the Board's minutes wherein it is noted among other things that the application for registration of Dr N J be approved for special purpose registration under section 135 to fill an area of need as a Principal House Officer in General Surgery at Redland Hospital from 10 January 2005 to 8 January 2006.
11. Annexed hereto and marked "JPO-6" is a true copy of the letter as sent by the Board to Dr N J Dated 11 January 2005, which includes a true copy of the certificate of registration "*Special Purpose – Section 135*". I note that this particular correspondence includes the advice to Dr N J that "*Special Purpose Registration enables you to fill an area of need as a Principal House Officer in General Surgery at Redland Hospital...*" and further "*It is advised that you are not registered as a specialist.*"
12. Annexed hereto and marked "JPO-7" is a true copy of a certification for an area of need pertaining to a registrant to whom I will refer as "Dr M P" in respect of a position of a Senior Medical Officer within General Surgery, Rockhampton Health Service District. The hospital

  
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has not sought certification of a specialist position in applying for an area of need certification from Queensland Health.

13. Annexed hereto and marked "**JPO-8**" is a true copy of the extract of the Board's minutes wherein it is noted among other things that the application for registration of Dr M P be approved for special purpose registration under section 135 to fill an area of need as a Senior Medical Officer in General Surgery at Rockhampton Health Service District from 1 November 2004 to 23 April 2005.
14. Annexed hereto and marked "**JPO-9**" is a true copy of the letter as sent by the Board to Dr M P Dated 15 November 2004, which includes a true copy of the certificate of registration "*Special Purpose – Section 135*". I note that this particular correspondence includes the advice to Dr M P that "*Special Purpose Registration enables you to fill an area of need as a Senior Medical Officer in General Surgery Rockhampton Health Service district 8 November 2004 to 23 April 2005...*" and further "*It is advised that you are not registered as a specialist.*"
15. Annexed hereto and marked "**JPO-10**" is a true copy of a certification for an area of need pertaining to a registrant to whom I will refer as "Dr A M" in respect of a position of Registrar within Surgery, Townsville Health Service District. The hospital has not sought certification of a specialist position in applying for an area of need certification from Queensland Health.
16. Annexed hereto and marked "**JPO-11**" is a true copy of the extract of the Board's minutes wherein it is noted among other things that the application for registration of Dr A M be approved for special purpose registration under section 135 to fill an area of need as a Registrar in Surgery at Townsville Health Service District from 9 March 2005 to 8 March 2006.
17. Annexed hereto and marked "**JPO-12**" is a true copy of the letter as sent by the Board to Dr A M Dated 11 May 2005, which includes a true copy of the certificate of registration "*Special Purpose – Section 135*". I note that this particular correspondence includes the advice to Dr A M that "*Special Purpose Registration enables you to fill an area of need as a Registrar in Surgery at Townsville Health Service District 9 March 2005 to 8 March 2006*" and further "*It is advised that you are not registered as a specialist.*"

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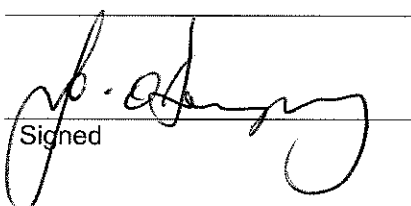
18. Annexed hereto and marked “**JPO-13**” is a true copy of a certification for an area of need pertaining to a registrant to whom I will refer as “Dr E S” in respect of a position of Registrar in Obstetrics and Gynaecology, Toowoomba Health Service District. The hospital has not sought certification of a specialist position in applying for an area of need certification from Queensland Health.
19. Annexed hereto and marked “**JPO-14**” is a true copy of the extract of the Board’s minutes wherein it is noted among other things that the application for registration of Dr E S be approved for special purpose registration under section 135 to fill an area of need as a Registrar in Obstetrics and Gynaecology, Toowoomba Health Service District from 17 January 2005 to 16 January 2006.
20. Annexed hereto and marked “**JPO-15**” is a true copy of the letter as sent by the Board to Dr E S Dated 21 January 2005, which includes a true copy of the certificate of registration “*Special Purpose – Section 135*”. I note that this particular correspondence includes the advice to Dr E S that “*Special Purpose Registration enables you to fill an area of need as a Registrar in Obstetrics and Gynaecology at Toowoomba Health Service district from 17 January 2005 until 16 January 2006...*” and further “*It is advised that you are not registered as a specialist*”.


Special Purpose Registrants who have been subject of particular evidence at this Inquiry

21. I will now deal in turn with two of the persons who in particular have been the subject of evidence at this Inquiry.

Dr Krishna

22. Annexed hereto and marked “**JPO-16A to 16-U**” are true copies of documents from the registration file of Dr Krishna marked with the letters respectively assigned and described as follows:
- (a) “**JPO16-A**” Application for Area of Need Certification dated 11/09/00
  - (b) “**JPO16-B**” Extract of the Board’s minutes dated 26/09/00
  - (c) “**JPO16-C**” Letter sent by the Board to Dr Krishna dated 07/12/00
  - (d) “**JPO16-D**” Certificate of Registration for period 04/12/00 to 03/12/01

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- (e) "JPO16-E" Application for Area of Need Certification
- (f) "JPO16-F" Extract of the Board's minutes dated 23/10/01
- (g) "JPO16-G" Letter sent by the Board to Dr Krishna dated 08/01/02
- (h) "JPO16-H" Certificate of Registration for the period 04/12/01 to 03/12/02
- (i) "JPO16-I" Application for Area of Need Certification for the period from 18/07/02 to 18/07/03
- (j) "JPO16-J" Extract of the Board's minutes dated 11/06/02
- (k) "JPO16-K" Letter sent by the Board to Dr Krishna dated 28/06/02
- (l) "JPO16-L" Certificate of Registration for the period 18/07/02 to 18/07/03
- (m) "JPO16-M" Application for Area of Need Certification for the period from 18/07/03 to 18/07/04
- (n) "JPO16-N" Extract of the Board's minutes dated 27/05/03
- (o) "JPO16-O" Letter sent by the Board to Dr Krishna dated 06/06/03
- (p) "JPO16-P" Certificate of Registration for the period 18/07/03 to 17/07/04
- (q) "JPO16-Q" Application for Area of Need Certification for the period from 18/07/04 to 17/07/05
- (r) "JPO16-R" Extract of the Board's minutes dated 08/06/04
- (2) "JPO16-S" Letter sent by the Board to Dr Krishna dated 08/07/04
- (t) "JPO16-T" Certificate of Registration for the period 18/07/04 to 17/07/05
- (u) "JPO16-U" Extract of Board minute dated 08/06/05 in relation to Dr Krishna's general registration with supervision

Dr Sharma

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23. Annexed hereto and marked “**JPO17A to 17-K**” are true copies of documents from the registration file of Dr Sharma marked with the letters respectively assigned and described as follows:
- (a) “**JPO17-A**” Application for Area of Need Certification for the period 27/01/03 to 25/01/04
  - (b) “**JPO17-B**” Extract of the Board’s minutes dated 25/02/03
  - (c) “**JPO17-C**” Letter sent by the Board to Dr Sharma dated 13/03/03
  - (d) “**JPO17-D**” Certificate of Registration for the period 27/02/03 to 25/01/04
  - (e) “**JPO17-E**” Application for Area of Need Certification for the period 25/01/04 to 25/01/05
  - (f) “**JPO17-F**” Extract of the Board’s minutes dated 09/12/03
  - (g) “**JPO17-G**” Letter sent by the Board to Dr Sharma dated 11/02/04
  - (h) “**JPO17-H**” Certificate of Registration for the period 26/01/04 to 25/01/05
  - (i) “**JPO17-I**” Application for Area of Need Certification for the period 17/01/05 to 17/01/06
  - (j) “**JPO17-J**” Letter sent by the Board to Dr Sharma dated 30/11/05
  - (k) “**JPO17-K**” Certificate of Registration for the period 17/01/05 to 16/01/06
24. Exhibits “**JPO-16-A**”, “**JPO-16B**”, “**JPO-16C**”, “**JPO16-D**”, “**JPO16-E**”, “**JPO-16F**”, “**JPO16-G**”, and “**JPO16-H**” all relate to area of need registration under the previous *Medical Act 1939*. They are included for completeness in allowing an examination of Dr Krishna’s registration history in an area of need.
25. From the documentation in which the Board dealt with the application for Special Purpose Registration in an area of need for Dr Krishna it can be seen in “**JPO16-I**” to “**JPO16-L**” that the Board was presented with an application for certification in an area of need which was for the Fraser Coast Health Service District. This is ultimately noted on the Certificate of Registration.
26. From the documentation upon which the Board dealt with the application for Special Purpose Registration in an area of need it can be seen in “**JPO16-M**” to “**JPO16-P**” that

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the Board was presented with an application for certification in an area of need which was for Maryborough and Hervey Bay (the Fraser Coast Health Service District). The Certificate of Registration notes the Special Purpose activity "to practise as a Senior Medical Officer in Orthopaedics at Fraser Coast Health Service District or any other public hospital authorised by the Medical Superintendent of Maryborough Hospital on a temporary basis". This is the same proposed geographic location as was proposed in the area of need certification which followed ("JPO16-Q") and resulted in the certificate noting same at "JPO16-T". It is noted from "JPO16-U" in the Board's minute that Dr Krishna was approved as a general registrant after he had received the Australian Medical Council Certificate of Successful Completion of the AMC examinations. A supervised practice program was put into place as a condition upon general registration for Dr Krishna from 14 June 2005.

27. From the documentation upon which the Board dealt with the application for Special Purpose Registration in an area of need for Dr Sharma it can be seen in "JPO17-A" to "JPO17-D" that the Board was presented with an application for certification in an area of need which was for the geographic location Maryborough and Hervey Bay within the Fraser Coast Health Service District. This is ultimately noted on the Certificate of Registration.
28. From the documentation in which the Board dealt with the Application for Special Purpose Registration in an area of need for Dr Sharma it can be seen in "JPO17-E" to "JPO17-H" that the Board was presented with an application for area of need certification which was for the geographic location of Maryborough and Hervey Bay within the Fraser Coast Health Service District. This is ultimately noted on the Certificate of Registration ("JPO17-H").
29. From the documentation in which the Board dealt with the Application for Special Purpose Registration in an area of need for Dr Sharma it can be seen in "JPO17-I" that the Board was presented with an application for area of need certification which was for the geographic location of Hervey Bay and Maryborough Hospital for a position as SMO in the department of Orthopaedics. This is ultimately noted on the Certification of Registration ("JPO17-K").
30. In respect of the application for area of need certification ("JPO17-E") I note that the position of "Senior Medical Officer – Orthopaedics" did not translate to the special purpose activity notation in the Certification of Registration. Whilst this appears to be different in that the designated position description is picked up in the subsequent Certificate of Registration "JPO17-K" in the following annual renewal of Special Purpose Registration,

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the earlier certificate nevertheless relates to a Special Purpose Registration within the appropriate geographical locality. The Board's covering letter "JPO17-G" noted "It is advised that you are not registered as a specialist". As part of an improvement in this area the Board has moved toward particularising the registration documentation process to more accurately reflect upon the geographical area of need together with the designated position description. Those descriptions are evidenced in "JPO-1" to "JPO-15" above.

Example of Special Purpose Registration Deemed Specialty

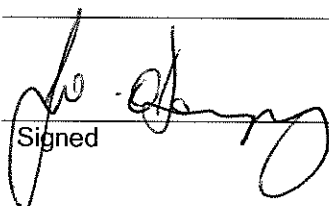
31. In a small percentage of applications for special purpose registration, the application requires consideration by the Board for the purposes of recognition as a "deemed specialist." The application for area of need certification firstly must have a geographic area of need proposed as well as the Specialist position nominated.
32. A deemed specialist does not have his/her name entered upon the register of specialist practitioners in Queensland. However, once deemed a specialist pursuant to section 143A the practitioner may properly hold him/herself out as a specialist within the deemed specialty. This is against the background that a properly registered medical practitioner may perform any medical or surgical procedure upon any person which might fall within a recognised field of specialisation without holding specialist registration, subject only to possessing acceptable competence and skill in that procedure.
33. I now turn to the administrative process as adopted by the Board in assessing applications for special purpose area of need as a deemed specialist pursuant to S.143A of the Act. Annexed hereto and marked "JPO-18" is a true copy of a letter from the Royal Australasian College of Surgeons dated 10 November 2004 in respect of Dr C H.
34. Annexed hereto and marked "JPO-19" is a true copy of a "Application for Area of Need Certification" which nominates the Cairns Health Service District and the geographical location in the area of need and the position noted is as a "Staff Specialist ENT" for Dr C H.
35. Annexed hereto and marked "JPO-20" is a true copy of the extract of the Board's minute wherein it is noted among other things that the application for registration of Dr C H be approved for special purpose registration under section 135 and section 143A to fill an area of need within the specialty of Otolaryngology – Head and Neck Surgery at Cairns Health Service District from 8 December 2004 to 31 August 2005. This Board minute, in contrast


to the other Board minutes annexed hereto, makes particular mention of S143A which deals with deemed specialist registration.

36. Annexed hereto and marked "JPO-21" is a true copy of a letter dated 4 February 2005 to Dr C H confirming that he had been granted "special purpose registration as a Medical Practitioner and Deemed Specialist in Queensland pursuant to Section 135 and Section 143A of the Medical Practitioners Registration Act 2001, effective from 8 December 2004 and valid until 31 August 2005." This letter is in a distinctly different form to the other letters to general practitioners exhibited hereto.
37. The original of the letter of 4 February 2005 to Dr C H also attached the original of the certificate of registration – "Special Purpose – Section 135 (Deemed Specialist)". Thus, the Certificate of Registration is also significantly different to the Certificates relating to general registration exhibited hereto, in that the Certificate contains the words "(deemed specialist)" and "in the specialty of".

Dr Patel and other doctors' Applications for Special Purpose Registration

38. I have touched upon this issue in my statement to the previous Commission of Inquiry No. 1 of 2005 (see Exhibit 28, para 38) also, in my evidence at T539 I stated the Board's position that Dr Patel was never either accepted nor regarded by the Board as a deemed specialist.
39. Dr Patel's application for special purpose registration was never presented to the Board as an application for deemed specialist registration. Firstly, the area of need certification, a prerequisite for registration, did not relate to the specialty of surgery nor to a specialist staff position. It referred to a position of Senior Medical Officer within Surgery at the Bundaberg Base Hospital. However most importantly in connection with his application for registration there was never any approach by the employer to the Royal Australian and New Zealand College of Surgeons for an assessment of Dr Patel under the agreed national assessment process for area of need specialists. This agreed process was developed under the auspices of the Commonwealth Department of Health & Ageing and in consultation with each state and territory Department of Health. The development of this agreement is available as annexed to my original statement ("JPO-18" at pages 5-7).
40. Consequently the Board did not receive any communication from the College of the outcome of any such assessment process. This element was then, and still is, regarded by

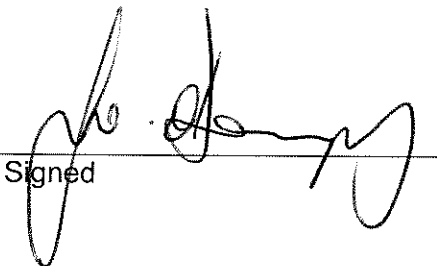
  
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the Board as an essential pre-requisite for consideration of the application for registration with a "deemed" specialty.

41. If the relevant college does not communicate its support for the applicant practising in the area of need – deemed specialist position described, the Board will not process an application pursuant to S.143A. Other applicants for registration such as Dr Sharma and Dr Krishna were also never presented by the employer for specialist registration and were thus not at any time regarded by the Board as applicants for positions as "deemed" specialists.
42. The pathway for specialist recognition for an overseas trained doctor is outlined in the flow chart as produced by the Australian Medical Council on the last page of annexure "JPO-18" in my statement to Commission of Inquiry No. 1 of 2005 which is exhibit 28. I also refer to the process of the role of the relevant colleges in accrediting overseas trained doctors as deemed specialists by reference to the evidence of Dr Molloy at T779.
43. Finally as further support to the proposition that Dr Patel and those named at paragraph 35 above were never registered, and never intended to be registered, as "deemed" specialists I respectfully refer to the analysis of the distinction between the declaration of an area of need with reference to both locality and specialisation as outlined in the interim report of Commission of Inquiry No. 1 dated 10 June 2005, at Paragraphs 31 – 43.
44. All the facts and circumstances above deposed to are within my own knowledge, save such as are deposed to from information only, and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by JAMES PATRICK O'DEMPSEY on the 14<sup>th</sup> day of OCTOBER 2005

Signed 

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