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Our Ref: PDM:01-0686760
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Attention: Commissioner the Hon. Geoffrey L. Davies
Commissioner
Commission No 2 of 2005
Level 9
363 George Street
BRISBANE QLD 4000

7 September 2005

By email

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Dear Commissioner

MEDICAL BOARD OF QUEENSLAND

We act for the abovenamed Board for the purposes of *Commissions of Inquiry Order (No.2) of 2005* as well as Board members past and present and Mr James Patrick O'Dempsey, Executive Officer, Office of Health Practitioner Registration Boards ("OHPRB") and staff members of the OHPRB past and present.

Mr Devlin and Ms McMillan of Counsel will be instructed to appear on behalf of the Board in any public hearings.

The purpose of this letter is to place two issues before you for your consideration:

1. Supplementation of the evidence of the Medical Board; and
2. A matter of interpretation of the Terms of Reference dated Tuesday 6 September 2005.

Supplementary Evidence of the Medical Board of Queensland

For the assistance of the previous Commission of Inquiry, our client instructed us to place the following witness statements before it:

1. Statement of James Patrick O'Dempsey dated 17 May 2005;
2. Statement of Dr Erica Mary Cohn dated 17 May 2005; and
3. Statement of Michael Steven Demy-Geroe dated 17 May 2005.

Upon a review of that evidence, and with the benefit of hearing subsequent evidence heard by the first Inquiry, and in view of the administrative measures put in place since 17 May 2005, we advise that we intend to provide a supplementary statement from at least Mr O'Dempsey for the further assistance of the Commission. We anticipate that we can provide this additional material by Monday 12 September 2005.

For the further assistance of the Commission we advise that we propose to provide an Affidavit of Ainslie McMullen, who was the initial assessor of Dr Patel's Application for Registration dated 6 January 2003, which was submitted to the Board on behalf of Dr Patel by Wavelength Consulting Pty Ltd on 17 January 2003.

We anticipate that, since an important focus of the Commission's inquiries will be any possible misconduct by any employees of the Medical Board, an Affidavit from Ms McMullen would be appropriate.

Should the Commission require any further information or evidence from an employee or a member of the Board, please let us know.

Terms of Reference

We respectfully draw your attention to the terms of the Order in Council dated 6 September 2005, in particular:

"(b)(i) any substantive allegations, complaints or concerns relating to the clinical practice and procedures conducted by Dr Patel at the Bundaberg Base Hospital;"

and

"(e) in relation to (a) to (d) above, whether there is sufficient evidence to justify:

(i) referral of any matter to the Commissioner of the Police Service for investigation or prosecution; or

(ii) action by the Crime and Misconduct Commission in respect of official misconduct or disciplinary matters."

Upon an examination of the previous Order in Council we note the terms of paragraph (5) which bears a similarity to paragraph (e) of the second Order in Council, except for the excision of the following words:

"c. the bringing of disciplinary or other proceedings or the taking of other action against or in respect of Dr Patel or any other person."

With respect, we read the new Order in Council as not requiring the Commission to make recommendations for Patel or any other medical practitioner to be referred to the Board for investigation over "*unsatisfactory professional conduct*" pursuant to the *Health Practitioners (Professional Standards) Act 1999*.

If we are correct in this interpretation of the second Order in Council, it seems to follow that the Commission will have no function to make recommendations concerning the investigation of Dr Patel and other medical practitioners. For your information, such an investigation was instituted some six weeks ago and is currently well advanced.

For your information, four surgical procedures conducted by Dr Patel are currently under investigation by the Medical Board of Queensland. A further 20 surgical cases are currently under assessment by the Health Rights Commission, and some of those may be referred to the Medical Board for further investigation and possible prosecution of Dr Patel or other medical practitioners. The Board also has under consideration a further 17 surgical cases, some of which may soon be the subject of recommendations for disciplinary proceedings against Dr Patel or other medical practitioners.

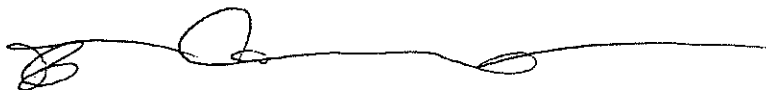
Given the apparent construction of the second Order in Council we are currently of the view that the Board's investigations should continue and that appropriate charges under the *Health Practitioners (Professional Standards) Act* may be laid without further reference to the Commission.

We wish to make it absolutely clear, however, that the Board does not wish to impede in any way the work of the Commission. Equally, the Board is of the view that it is in the public interest to proceed as soon as possible on any clear evidence which raises a *prima facie* case against any medical practitioner.

Our instructions are to act at all times in support of the Commission, and in the public interest.

We would welcome any response to our observations.

Yours faithfully
GILSHENAN & LUTON



Paul McCowan
Partner