

Submissions

Wavelength Consulting
Pty Ltd



Our ref: ARF:0383205

28 October 2005

Mr J Cowley-Grimmond
Principal Lawyer
Queensland Public Hospitals
Commission of Inquiry
By fax 3109 9151

Waterfront Place
1 Eagle Street
Brisbane QLD 4000
PO Box 7804
Waterfront Place QLD 4001
Australia
DX 289 Brisbane
Tel +61 7 3246 4000
Fax +61 7 3229 4077
www.phillipsfox.com

Adelaide
Brisbane
Canberra
Melbourne
Perth
Sydney
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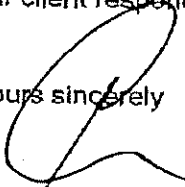
Dear Mr Cowley-Grimmond

Wavelength Consulting Pty Ltd

I refer to our telephone discussions yesterday in relation to the submissions delivered by other parties.

Copies of submissions on behalf of the Medical Board, the Queensland Nurses Union and various Queensland Health employees were received yesterday evening. In accordance with the directions made by the Commissioner, Mr Davies, we will deliver submissions on behalf of our client responding to these submissions on Wednesday, 2 November 2005.

Yours sincerely


Andrew Forbes
Special Counsel
Direct +61 7 3246 4086
Email andrew.forbes@phillipsfox.com

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Mr J Cowley-Grimmond
Principal Lawyer
Queensland Public Hospitals
Commission of Inquiry
Level 9
Brisbane Magistrates Court
363 George Street
BRISBANE QLD 4000
By fax and hand: 3109 9151

Waterfront Place
1 Eagle Street
Brisbane QLD 4000
PO Box 7804
Waterfront Place QLD 4001
Australia
DX 289 Brisbane
Tel +61 7 3246 4000
Fax +61 7 3229 4077
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Dear Mr Cowley-Grimmond

Wavelength Consulting Pty Ltd

I refer to the Notice of Potential Adverse Finding and **enclose** submissions on behalf of Wavelength Consulting Pty Ltd.

Yours sincerely


Kerry Hogan-Ross

Partner

Direct +61 2 9286 8326

Email kerry.hogan-ross@phillipsfox.com

Encl

Queensland Public Hospitals *Commission of Inquiry*

Submissions on behalf of Wavelength Consulting Pty Ltd

Dr John Bethell gave evidence on behalf of Wavelength Consulting Pty Ltd (**Wavelength**) at the Commission of Inquiry on 1 and 2 June 2005 when it was constituted by Mr A Morris QC.

Wavelength makes submissions in response to the Notice of Potential Adverse Finding dated 19 October 2005 (**the Notice**).

- 1 In response to paragraph (a) of the Notice, Wavelength did not fail to insist on references that were less than twelve months old.
 - 1.1 The contention that Wavelength failed to insist on references that were less than twelve months old overlooks that Dr Bethell obtained current oral references from two of the referees who had provided written references for Dr Patel.
 - 1.2 Dr Bethell spoke to Dr Feldman and Dr Singh (T680 at 37 – 38; T696 at 21 – 22) and the references provided were glowing (T680 at 55 – 56). The effect of the references was that Dr Patel was a very high quality candidate and nothing adverse was revealed (T681 at 6 – 8).
 - 1.3 The referees spoken to by Dr Bethell were selected by him because they were a surgeon and an anaesthetist respectively who had worked with Dr Patel. Dr Singh was the chief anaesthesiologist at Kaiser Permanente (T761 at 50 – T762 at 5).
 - 1.4 The written references were respectively dated 4 May 2001, 18 May 2001, 23 May 2001, 30 May 2001 and two dated 4 June 2001. The written references were therefore current to when Dr Patel represented he had retired from practise and at the time of his application for employment in Australia were only approximately eighteen (18) months old.
 - 1.5 Moreover, Dr Patel had been widely published in several internationally recognised and peer reviewed journals (T694 at 39 – 41; T695 at 7 – 10; T695 at 14 – 15; T695 at 20 – 21).
- 2 In response to paragraph (b)(i) of the Notice, Wavelength did not obtain an explanation from Kaiser Permanente for Dr Patel's departure from that hospital; however, no adverse finding should be made in this regard for the reasons that:
 - 2.1 Dr Bethell specifically asked Dr Patel the reason for his ceasing employment with Kaiser Permanente and Dr Patel responded that he was in the process of retiring. The explanation given was a plausible and acceptable explanation (T695 at 35 – 39).
 - 2.2 It is not unusual for practitioners in the United States to retire in their 50's as they make significant income during their careers. The retirement of Dr Patel is consistent with other candidates spoken to by Dr Bethell since placing Dr Patel (T679 at 25 – 31).
 - 2.3 Dr Bethell received a written reference from the Director of Surgery who, it could reasonably be assumed, was Dr Patel's immediate supervisor. That

reference gave no basis upon which Wavelength should make further enquiries as to Dr Patel's reason for departing Kaiser Permanente.

- 2.4 On the basis of the six (6) written and two (2) verbal references obtained, there was no reasonable basis that should cause Wavelength to make further enquiry.
- 3 In response to paragraph (b)(ii) of the Notice, Wavelength did not contact Dr Patel's direct supervisor at Kaiser Permanente to obtain an explanation from Kaiser Permanente for Dr Patel's departure from that hospital; however, no adverse finding should be made in this regard for the reasons that:
- 3.1 Dr Bethell obtained oral references from the Chief of Anaesthesiology of Kaiser Permanente and the Staff Surgeon at that institution, both of whom would be expected to and did have a close association with Dr Patel in his daily practise, both having worked with him for in excess of 10 years.
- 3.2 The written reference obtained from the Chief of Surgery of Kaiser Permanente indicated nothing adverse concerning Dr Patel which would have called for further investigation.
- 4 In response to paragraph (b)(iii) of the Notice, Wavelength did not contact the Oregon State Board of Medical Examiners to ascertain whether there were any grounds for concern about Dr Patel's fitness to practise as a doctor; however, no adverse finding should be made in this regard for the reasons addressed at paragraphs 6.1 to 6.4 below in the response to paragraph (d) of the Notice.
- 5 In response to paragraph (c) of the Notice, Wavelength did not make enquiries into the inconsistencies between the CV's provided by Dr Patel, however, it is submitted that an adverse finding should not be made in this regard.
- 5.1 The discrepancy between the CV received in December 2002 (**the first CV**)(EX 41) and the CV received in January 2003 (**the second CV**)(Ex 46) was observed by Dr Bethell in or about May 2005 in the course of reviewing Wavelength's file in preparation for the Commission of Inquiry hearing (T689 at 2 – 20).
- 5.2 The second CV was provided by Dr Patel in January 2003 to support his application to the Medical Board of Queensland, which required more detail than was contained in the first CV. The second CV was dealt with administratively within Wavelength; simply being passed on to the Medical Board of Queensland.
- 5.3 By January 2003, the decision had already been taken by the Bundaberg Hospital to engage Dr Patel (T677 at 14 – 17; T688 at 17 – 22). In the circumstances, there was no reason for Dr Bethell to have undertaken a detailed examination of the second CV. Wavelength simply acted as a conduit in the transmission of the second CV to the Medical Board of Queensland.
- 5.4 The change to the second CV occurred as a result of a deception on the part of Dr Patel.

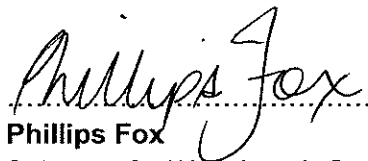
- 6 In response to paragraph (d) of the Notice, Wavelength did not make enquiries in relation to the Verification of Licensure issued by the Oregon State Board of Medical Examiners; however, it is submitted that an adverse finding should not be made in this regard.
- 6.1 Dr Bethell accepted in his evidence that he did not notice there was an attachment missing from Dr Patel's verification of licensure obtained from the Oregon State Board of Medical Examiners (T682 at 34).
- 6.2 The non-inclusion of the attachment to the verification of licensure in Dr Patel's application documents occurred as a result of a deception on the part on Dr Patel.
- 6.3 The fact that Dr Bethell did not make further enquiry with respect to the verification of licensure should be considered against the background of his experience and understanding of the practice of licensing authorities in Australia, New Zealand and the United Kingdom. In those jurisdictions, the relevant medical licensing authority does not issue a certificate of good standing (or its equivalent) if there is any impediment on the practitioners' fitness to practise (T697 at 56 – 58; T698 at 1).
- 6.4 On its face, the verification of licensure issued by the Oregon State Board of Medical Examiners gave no indication that there was any impediment to Dr Patel's fitness to practise. On the contrary, the verification of licensure expressly stated that there were no limitations (T698 at 12 – 18).
- 7 In response to paragraph (e) of the Notice, Wavelength did conduct enquiries into Dr Patel's background.
- 7.1 Reference is made to the oral references obtained by Dr Bethell.
- 7.2 There is no basis in the evidence to conclude that the references provided in writing by Dr Patel and obtained orally by Dr Bethell were not genuine. Nor is there any basis to infer that the referees contacted by Dr Bethell gave false, misleading or biased responses to Dr Bethell's enquiries.
- 7.3 During the course of interviewing the two referees, despite enquiry, those referees did not identify any concerns that they had with Dr Patel (T680 at 50 – 54). None were raised which caused or should have caused Dr Bethell any concern (T680 at 55 – 56 and T696 at 39 –40).
- 7.4 The assertion contained in (e) of the Notice, that Wavelength had no reason to believe that either Queensland Health or the Medical Board of Queensland would conduct relevant enquiries, is rejected.
- 7.5 It is a function of the Medical Board of Queensland, pursuant to section 11 of the *Medical Practitioners Registration Act 2001*, to assess applications for registration.
- 7.6 Further, Wavelength's terms and conditions expressly provided that the potential employer was required to make and rely upon its own enquiries with regard to the engagement of a candidate for employment (Ex42 clause 6; T676 at 10 – 17).

8 Wavelength did not ascertain the nature of the orders made by Oregon State Board of Medical Examiners and the Board of Professional Medical Conduct in the State of New York; however, it is submitted that an adverse finding should not be made in this regard.

8.1 Wavelength relies upon paragraphs 1 – 7 above in its responses to paragraphs (a) – (e) of the Notice above.

In the circumstances, no adverse finding should be made by the commission in relation to Wavelength.

Dated: 28 October 2005



Phillips Fox

Solicitors for Wavelength Consulting Pty Ltd