

## Chapter Four – The Hervey Bay Hospital

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*‘What do you want me to do; stop [the doctors] operating and then have no service?’*

Mr Michael Allsopp  
District Manager  
Fraser Coast Health Service District<sup>1</sup>

### A period of rapid growth

- 4.1 The Hervey Bay Hospital is one of two public hospitals within the Fraser Coast Health Service District. The other is the Maryborough Hospital.
- 4.2 The Hervey Bay Hospital opened as a new hospital at its present location at Cnr Nissen Street and Urraween Road, Hervey Bay in or about May 1997.<sup>2</sup> Dr Stable, the former Director-General of Queensland Health, said that the hospital’s opening was the only example he could recall of direct political pressure being brought to bear upon Queensland Health to open new beds.<sup>3</sup> He said that Queensland Health was directed to open the Hervey Bay Hospital before the 1998 state election.<sup>4</sup> He advised the then Minister, Mr Horan, that Queensland Health did not have the budget for it. The Minister responded, according to Dr Stable, ‘It does not matter. We’ll fix it after the election’.<sup>5</sup> Dr Stable said it was a major concern to him. It was premised upon ‘closing a fair bit’ of the Maryborough Hospital.<sup>6</sup> Dr Stable said it caused subsequent ‘pain’ for the following Minister.<sup>7</sup>
- 4.3 The previous hospital was described as a ‘cottage hospital,’<sup>8</sup> much the same as many rural hospitals in Queensland.<sup>9</sup> When the doors of the new hospital opened, the whole of the old service, staff and patients were transferred over to the new hospital.<sup>10</sup> At that stage, it was a 40 bed hospital.

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<sup>1</sup> T7358 line 20 (Ms Wyatt)

<sup>2</sup> T6791 line 50 (Dr Hanelt)

<sup>3</sup> T5746 line 55 T5747

<sup>4</sup> T5747 line 15

<sup>5</sup> T5747 line 15

<sup>6</sup> T5747 line 20

<sup>7</sup> T5747 line 20

<sup>8</sup> T6791 line 50 (Dr Hanelt)

<sup>9</sup> T6792 line 5 (Dr Hanelt)

<sup>10</sup> T6791 line 50 (Dr Hanelt)

- 4.4 As required, staff were recruited and services progressively opened.<sup>11</sup> The department of internal medicine commenced in September 1997.<sup>12</sup> A specialist service comprising anaesthetic services, obstetrics and paediatric units and elective day surgery commenced at the beginning of the following year. Later, in 1998, an on-call surgical service commenced.<sup>13</sup> The hospital progressively opened 24 hour services in those major areas. A 24 hour service in internal medicine was immediately provided when that service opened in 1997. A 24 hour service in obstetrics and paediatrics was provided from January 1998. A 24 hour service in surgical services commenced in or about August 1998.<sup>14</sup>
- 4.5 Hervey Bay is about a three and half to four hour trip by road to Brisbane, a distance of approximately 293 kilometres. It is about a one hour and 20 minutes trip from Bundaberg.<sup>15</sup> During the past 10 years, the Hervey Bay shire has experienced rapid growth.<sup>16</sup> It has been one of the fastest growing shires in Queensland.<sup>17</sup> As at June 2005, it had a population of approximately 50,000 people. The growth has brought with it demand upon the hospital to keep abreast with the needs of the population. The demographic is skewed towards an elderly population which places a high demand upon the hospital and, in particular, orthopaedic services.<sup>18</sup>
- 4.6 The majority of the non-elective orthopaedic throughput at the hospital, initially at least<sup>19</sup>, came through the emergency department.<sup>20</sup> The majority of elective admissions came through the orthopaedic clinic rather than the emergency department.<sup>21</sup>
- 4.7 Dr Morgan Naidoo commenced employment as staff orthopaedic surgeon at the Hervey Bay Hospital in late 1996.<sup>22</sup>
- 4.8 Prior to the appointment of Dr Naidoo, orthopaedic presentations at the hospital were managed by the emergency department, if the condition was straight forward. If the condition was more serious and needed specialist service, the patient was referred to the Maryborough Hospital or, if there was no service available at Maryborough, further afield.<sup>23</sup>

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<sup>11</sup> T6792 line 25 (Dr Hanelt)

<sup>12</sup> T6792 line 30 (Dr Hanelt)

<sup>13</sup> T6792 line 35 (Dr Hanelt)

<sup>14</sup> T6792 line 50 T6793 line 1 (Dr Hanelt)

<sup>15</sup> T6797 line 35 (Dr Hanelt)

<sup>16</sup> T6794 line 40 (Dr Hanelt)

<sup>17</sup> T6794 line 40 (Dr Hanelt)

<sup>18</sup> Exhibit 456 para 3.7 Statement of Allsopp

<sup>19</sup> In some instances, patients are initially admitted through the emergency department and later return for further procedures as an elective patients

<sup>20</sup> T6794 line 50, T6795 line 10 (Dr Hanelt)

<sup>21</sup> T6795 line 25 (Dr Hanelt)

<sup>22</sup> Exhibit 444A, Statement of Hanelt attachment TMH 26 and 26A; Exhibit 431 Statement of Naidoo attachment MMN1

<sup>23</sup> T6793 line 20 (Dr Hanelt)

- 4.9 The Hervey Bay Hospital now has 8-10 orthopaedic beds. It has adequate operating theatres, imaging devices and pathological services for the provision of orthopaedic services for the local community.<sup>24</sup> However, it has never had a full complement of medical staff to provide an adequate and safe emergency and elective orthopaedic surgery service notwithstanding that, throughout the period of its operation until May 2005 when it was closed down, that service was offered. It certainly has not kept abreast with the demands of the growing population.

## Orthopaedic staff

### Minimum orthopaedic staff numbers

- 4.10 Drs North and Giblin recommended in the North Giblin report,<sup>25</sup> referred to in detail later, that a minimum of four registered specialist orthopaedic surgeons would be required to deliver orthopaedic services of an adequately safe nature to the Fraser Coast District.<sup>26</sup> Possibly five would be required, if continuing professional development activities and recreation leave were to be undertaken with safety. Five would provide a stable base for consideration of an Australian Orthopaedic Association accredited training post in the region in the future.
- 4.11 Dr Naidoo also prepared a document for the future provision of orthopaedic services for the Fraser Coast District. He also recommended that there should be four orthopaedic surgeons.<sup>27</sup>
- 4.12 Mr Michael Allsopp, the District Manager, and Dr Terrence Hanelt, the Director of Medical Services, both also conceded that, at least since the hospital has been providing a 24 hour orthopaedic service, the hospital has needed a minimum of four specialist orthopaedic surgeons to provide an adequate service.<sup>28</sup> Dr Hanelt said a suitable mix of full time staff and Visiting Medical Officers would be two full-time orthopaedic surgeons, so that when one is on leave there is still one on campus, and two visiting medical specialists. Four orthopaedic surgeons also would allow for a one in four on-call roster during normal periods when all surgeons were available and a one in three or, at worst, one in two on-call roster during leave periods.<sup>29</sup>

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<sup>24</sup> Exhibit 38 para 8

<sup>25</sup> Exhibit 38 Dr John North MBBS FRACS AOrthA and Dr Peter Giblin MBBS FRACS AOrthA *A Review of Orthopaedic Health Care in Fraser Coast Health Region* submitted to the Director-General of Queensland Health Dr Stephen Buckland in May 2005

<sup>26</sup> Exhibit 38 para 22

<sup>27</sup> T6593 line 10 (Dr Naidoo)

<sup>28</sup> T6795 line 50 – 6797 line 1 (Dr Hanelt); Exhibit 456 para 4.42 Statement of Allsopp

<sup>29</sup> T6796 line 1 (Dr Hanelt)

## Dr Morgan Naidoo

- 4.13 Notwithstanding these opinions, during the period from 1997 until 2000, Dr Naidoo was the only orthopaedic surgeon practising at the Hervey Bay Hospital. Dr Naidoo was registered as an orthopaedic surgeon in Queensland in 1981.<sup>30</sup> He arrived in Australia in 1975 after early education and training in South Africa. After securing a surgical training post in Queensland, he obtained his primary fellowship to the Royal Australasian College of Surgeons in 1976, and his final fellowship in May 1980. He became a fellow of the Australian Orthopaedic Association in 1982.<sup>31</sup>
- 4.14 Prior to his appointment to Hervey Bay Hospital, Dr Naidoo had worked in various hospitals in Queensland as an orthopaedic surgeon. Between 1982 and 1986, he held the position of Director of Orthopaedic Surgery at the Rockhampton Base Hospital, a major referral hospital then with 44 orthopaedic beds.<sup>32</sup> From 1986 until his appointment to the Hervey Bay Hospital, he worked in private practice in Ipswich with visiting sessions at the Ipswich General Hospital and Military Hospital.<sup>33</sup>
- 4.15 Dr Naidoo was employed at the Hervey Bay Hospital between 1997 and 2002 as a Senior Staff Specialist, and after August 2002, as Director of Orthopaedics. Dr Naidoo's conditions of employment were the same as applied to staff specialists throughout Queensland Health.<sup>34</sup> In both positions, the terms and conditions of his employment were prescribed under the State Senior Medical Officers and Resident Medical Officers Awards.<sup>35</sup> Pursuant to these awards, the ordinary hours of duty of Senior Medical Officers<sup>36</sup> must be worked between the hours of 8:00am and 6:00pm.<sup>37</sup> They are paid fortnightly and are not paid on an hourly basis, except for the purpose of calculating and paying them overtime. The ordinary hours can not exceed nine hours each day or 90 hours per fortnight exclusive of meals.<sup>38</sup> The actual hours they work varies between the hospitals. Some work 40 hours, others 45 hours. The hours depend upon the local requirements of the hospital. Dr Naidoo received the same leave entitlements as did any other staff specialist.<sup>39</sup>

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<sup>30</sup> Exhibit 431 para 1 Statement of Naidoo

<sup>31</sup> Exhibit 431 attachment MMN1 p21 Statement of Naidoo

<sup>32</sup> Exhibit 431 attachment MMN1 p21 Statement of Naidoo

<sup>33</sup> Exhibit 431 attachment MNN1 p22 Statement of Naidoo

<sup>34</sup> Exhibit 456 para 4.26, Statement of Allsopp; T6798 line 1 (Dr Hanelt)

<sup>35</sup> *Regional Health Authorities – Senior Medical Officers' and Resident Medical Officers' Award – State* 21 December 1994 and *District Health Services – Senior Medical Officers' and Resident Medical Officers' Award – State* 15 July 2003

<sup>36</sup> The term Senior Medical Officer in this context refers to senior medical practitioner, including College Fellow Specialist - See Chapter 2

<sup>37</sup> cl 4.2, 6.2

<sup>38</sup> cl 4.2, 6.2

<sup>39</sup> Exhibit 456 para 4.6 Statement of Allsopp; T6798 line 15 (Dr Hanelt)

- 4.16 Dr Naidoo's primary residence was in Brisbane, notwithstanding that, as part of his entitlement, he was provided with a house or rental subsidy at Hervey Bay. He said that he commuted to Hervey Bay each week. He said that he usually travelled to Hervey Bay at the beginning of the each week and returned to Brisbane each weekend, unless on-call. When he was on-call, he said, he stayed in Hervey Bay. The concession to allow Dr Naidoo to reside in Brisbane was made, according to the District Manager, Mr Allsopp,<sup>40</sup> in order to secure an orthopaedic service at Hervey Bay. However, as acknowledged by Mr Allsopp,<sup>41</sup> and as set out below, the concession had limitations and led to problems.
- 4.17 Until the appointment of two Senior Medical Officers, Dr Damodaran Krishna on 20 July 2002 and Dr Dinesh Sharma in February 2003, Dr Naidoo had no full time orthopaedic support.<sup>42</sup> There were no registrars in the orthopaedic department because the hospital did not meet the standards required for an orthopaedic training post.<sup>43</sup>
- 4.18 Several years ago, before the appointment of the Senior Medical Officers, the District had approval for another orthopaedic surgeon to be appointed to the hospital.<sup>44</sup> Dr Hanelt stated that the hospital advertised for another orthopaedic surgeon, at least, a couple of times.<sup>45</sup> In conjunction with St Stephen's Hospital, it also did a mail-out to every registered orthopaedic surgeon in Australia and New Zealand to try and attract another orthopaedic surgeon to the District.<sup>46</sup> Dr Hanelt stated that the recruitment attempts proved fruitless.<sup>47</sup>
- 4.19 The gross inadequacy of clinical staff members placed pressure on Dr Naidoo. It made it difficult for him to provide a proper, efficient and safe orthopaedic service.<sup>48</sup> But, as is plain from the opinion evidence referred to earlier, it was not just difficult; it was impossible. Dr Naidoo also had to run all the fracture clinics.<sup>49</sup> Elective surgery was cancelled to accommodate emergency surgery.<sup>50</sup> He said that he made regular complaints at surgical management committee meetings and senior medical staff meetings or on a casual basis to the District Manager at the time and Dr Hanelt about the shortage of junior staff

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<sup>40</sup> Exhibit 456 para 4.38 Statement of Allsopp

<sup>41</sup> Exhibit 456 para 4.38 Statement of Allsopp

<sup>42</sup> Exhibit 431 para 5.1 Statement of Naidoo

<sup>43</sup> Exhibit 38 para 10 North Giblin report

<sup>44</sup> T6749 line 10 (Dr Hanelt)

<sup>45</sup> T6749 line 30 (Dr Hanelt)

<sup>46</sup> Exhibit 456 para 4.42 Statement of Allsopp; T6749 line 30-40, T6797 line 40 (Dr Hanelt)

<sup>47</sup> Exhibit 456 para 4.42 Statement of Allsopp; T6749 (Dr Hanelt)

<sup>48</sup> Exhibit 431 para 5.2 Statement of Naidoo

<sup>49</sup> Exhibit 431 para 5.5 Statement of Naidoo

<sup>50</sup> Exhibit 431 para 6.4 Statement of Naidoo

and resident medical officers.<sup>51</sup> He was frustrated by the frequent shortage of junior medical staff.<sup>52</sup> He said he received no real administrative support.<sup>53</sup>

### **Dr Mullen's appointment as Visiting Medical Officer**

- 4.20 Dr Sean Mullen is a registered orthopaedic surgeon and Fellow of the Royal Australasian College of surgeons (Orthopaedics).<sup>54</sup> He was appointed a Visiting Medical Officer at the Hervey Bay Hospital in 2000. He had, for the previous year, worked as a full time staff orthopaedic surgeon at the Princess Alexandra Hospital.<sup>55</sup> He made contact with Dr Hanelt before he moved to Hervey Bay to commence private practice. He offered his services as a Visiting Medical Officer. His offer was accepted.<sup>56</sup>
- 4.21 Dr Mullen's appointment was limited. Initially, Dr Mullen had a two session commitment each week; one operating session and one clinic session.<sup>57</sup> This amounted to a total of approximately 7 hours.<sup>58</sup> He was also on-call one week night and one weekend in four for emergencies.<sup>59</sup> Dr Mullen also performed private specialist medical services. He did this both at the Hervey Bay Hospital and at the St Stephens Private Hospital in Maryborough.<sup>60</sup>
- 4.22 During the period between 30 September 2002<sup>61</sup> and February 2004,<sup>62</sup> Dr Mullen ceased his visiting operating and outpatients' session work at the hospital.<sup>63</sup> He remained available for some on-call work. Dr Mullen accepted that the addition of a new baby to his family was a factor in his mind<sup>64</sup> and that this was the reason stated in his letter of resignation.<sup>65</sup> However, he said, and I accept that, it was not the only reason why he withdrew his services at the time.<sup>66</sup> He said that he had been 'banging [his] head against a brick wall for such a long time' about the issue of patient safety.<sup>67</sup> He stated that the situation at the hospital had become untenable for him as a professional as regards his relationship with Dr Naidoo and Dr Naidoo's inadequate

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<sup>51</sup> Exhibit 431 para 5.7 Statement of Naidoo

<sup>52</sup> Exhibit 431 para 5.8 Statement of Naidoo

<sup>53</sup> Exhibit 431 para 5.4 Statement of Naidoo

<sup>54</sup> Exhibit 330 para 1 Statement of Mullen

<sup>55</sup> Exhibit 330 para 1 Statement of Mullen

<sup>56</sup> Exhibit 330 para 3 Statement of Mullen

<sup>57</sup> Exhibit 330 para 4 Statement of Mullen; T5447 line 5; Exhibit 431 para 7.2 Statement of Naidoo

<sup>58</sup> Exhibit 330 para 4 Statement of Mullen; T6590 line 50 (Dr Naidoo)

<sup>59</sup> Exhibit 330 para 5 Statement of Mullen; T6590 line 60 (Dr Naidoo)

<sup>60</sup> Exhibit 444A para 33(iii) Statement of Hanelt

<sup>61</sup> Exhibit 444A TMH11 Statement of Hanelt

<sup>62</sup> Exhibit 456MA11 Statement of Allsopp

<sup>63</sup> Exhibit 444A para 33 (ii), TMH 10–14B Statement of Hanelt

<sup>64</sup> T5478 line 50, 5479 line 10

<sup>65</sup> Exhibit 444A TMH 11 Statement of Hanelt

<sup>66</sup> T5479 line 30

<sup>67</sup> T5479 line 20

supervision of junior staff.<sup>68</sup> He felt that he could not give his family and private practice the time they needed as well as deal with these problems.<sup>69</sup>

- 4.23 Dr Mullen did return to session work in February 2004. His commitment from then on seems to have lessened to four sessions per month<sup>70</sup> plus on-call work. He remained a visitor there until his resignation after the delivery of the North Giblin report in early May 2005.<sup>71</sup>

## Administrators

### District Manager

- 4.24 Mr Allsopp was appointed the District Manager for the Fraser Coast Health Service District in April 2001. Mr Allsopp has a business background. He graduated with a business degree in 1986 and a Masters in Business Administration in 1996. His appointment to the District was his first appointment to the position of a District Manager. Prior to this, he had been employed as Director of Finance at the Royal Brisbane and Royal Women's Health Service Districts and before that as Team Leader for the Commissioning Royal Brisbane Royal Women's Hospitals Redevelopment Project.<sup>72</sup> He resigned from the position of District Manager in September 2005.<sup>73</sup>

### Director of Medical Services

- 4.25 Dr Hanelt has been the Director of Medical Services for the Fraser Coast Health Service District since 1994. Prior to that, he served as a Medical Superintendent at a number of country hospitals including at Kingaroy, Charters Towers, Emerald and Injune. He is medically trained having graduated in Medicine from the University of Queensland in 1982. He is registered as a medical practitioner. Until recently, in addition to general practitioner privileges, he held clinical privileges for the District, obtained through the previously existing Rural and Remote Privileging Committee, in the areas of obstetrics and gynaecology for all forms of vaginal and operative deliveries, a range of gynaecological procedures and for closed orthopaedics.<sup>74</sup>

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<sup>68</sup> Exhibit 330 para 15 Statement of Mullen

<sup>69</sup> T5479 line 5

<sup>70</sup> T5812 line 45 (Dr Mullen); Exhibit 456 para 4.19 Statement of Allsopp; Exhibit 330 para 16 Statement of Mullen; T5423 line 50-5424 line 10 (Ms Erwin-Jones); Exhibit 444A TMH14B Statement of Hanelt

<sup>71</sup> Exhibit 444A TMH17 and TMH19 Statement of Hanelt

<sup>72</sup> Exhibit 456 pp3-4 attachment MA1 Statement of Allsopp

<sup>73</sup> T7070 line 45 (Mr Allsopp)

<sup>74</sup> Exhibit 444A attachment TMH1, Statement of Hanelt; T6722 line 25 (Dr Hanelt)

## Appointment of Senior Medical Officers

### Appointment of Dr Damodaran Krishna

- 4.26 Dr Krishna was appointed a Senior Medical Officer with the Fraser Coast Health Service District on 20 July 2002.<sup>75</sup> A condition of his employment was that, as a District employee, he could be required to work within any facility in the District.<sup>76</sup> He was assigned to the Hervey Bay hospital.
- 4.27 Dr Krishna obtained a diploma in surgery and medicine from the Fiji School of Medicine in 1982. He also obtained a Diploma in Orthopaedics awarded by the Australian Orthopaedic Association in 1995. This diploma, according to Drs North and Giblin, was not recognised or considered as a qualification in orthopaedic surgery by the Australian Orthopaedic Association or the Royal Australasian College of Surgeons.<sup>77</sup> It was awarded in recognition of participation in professional development organised by the Orthopaedic Outreach Fund Inc where volunteer orthopaedic surgeons travelled to Fiji, amongst other places, to develop the skills of doctors to practise some limited orthopaedic surgery in their home country. According to Drs North and Giblin, the Australian Orthopaedic Association ceased issuing the diploma from 2003 due to the fact that many held out the diplomas as a qualification in orthopaedics, which it was not.<sup>78</sup>
- 4.28 Dr Krishna was registered as a specialist in orthopaedics in Fiji in 1998.<sup>79</sup> He served in various hospitals in Fiji before coming to Australia including, he stated, as the sole orthopaedic surgeon at Labasa Hospital, a divisional hospital in Fiji, practising in trauma and general orthopaedics.<sup>80</sup>
- 4.29 Dr Krishna was not registered nor assessed for practice as an orthopaedic specialist in Australia.
- 4.30 On 4 December 2000, Dr Krishna was initially granted special purpose registration to fill an area of need within a public hospital on 4 December 2000. This was to commence work as a medical officer at the Toowoomba Hospital. His special purpose registration was subsequently renewed annually.<sup>81</sup> Whilst he was employed at the Hervey Bay Hospital, he was, until recently, registered as a medical practitioner under the special purpose provisions of s135 of the *Medical Practitioners Registration Act 2001*. I shall say something about the form of that registration, from time to time, in Chapter Six – Part C.

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<sup>75</sup> Exhibit 424 para 13, DK4 Statement of Krishna

<sup>76</sup> Exhibit 424 DK4 Statement of Krishna

<sup>77</sup> Exhibit 38 p10 North Giblin report

<sup>78</sup> Exhibit 38 p10 North Giblin report

<sup>79</sup> Exhibit 444A TMH28 Statement of Hanelt

<sup>80</sup> Exhibit 424 paras 9, 10 Statement of Krishna

<sup>81</sup> Exhibit 424 para 14 Statement of Krishna

- 4.31 It was made known to the Queensland Medical Board, at the time of his first and each subsequent registration under s135, that he would be practising in orthopaedic surgery.<sup>82</sup> Before so registering Dr Krishna, the Medical Board made no assessment of his skills or competence to enable it to safely conclude, as it was required to do under s135(2), that he had medical qualification and experience suitable for practising orthopaedic medicine at the Hervey Bay Hospital. I will say something more about that and its consequences also in Chapter Six – Part C.
- 4.32 Dr Krishna did not believe that he was registered in Queensland as a specialist and knew that the Medical Board did not regard him as registered as a specialist. Administrators at the Hervey Bay Hospital, Mr Allsopp and Dr Hanelt also did not believe that Dr Krishna was registered in Queensland as a specialist.<sup>83</sup>
- 4.33 Curiously absent were any conditions attached to his special purpose registration<sup>84</sup> or letter of appointment<sup>85</sup> requiring supervision.
- 4.34 Dr Krishna successfully passed the Australian Medical Council examination on 16 October 2004 and now has been granted general registration on supervised practice conditions by the Queensland Medical Board.<sup>86</sup> At the time he gave evidence, he was performing practice in accordance with those supervised practice conditions.<sup>87</sup> This was the first time supervision was imposed as a condition on his registration.
- 4.35 Dr Anthony Wilson, Orthopaedic surgeon, who was a part time staff surgeon at the Toowoomba Hospital, and under whom Dr Krishna acted in the position of non-training Registrar in Orthopaedics in 2002, assessed Dr Krishna as having progressed as expected for a person in his position with supervision at the Toowoomba Hospital.<sup>88</sup> Dr Wilson had expected him to continue to progress naturally at the Hervey Bay Hospital<sup>89</sup> provided he obtained the necessary supervision and training.<sup>90</sup>
- 4.36 Dr Krishna gave evidence that he had no privileges in Toowoomba because he had to do everything supervised.<sup>91</sup> Dr Krishna said that, when he worked at the Toowoomba Hospital in 2002, before he came to Hervey Bay, he had '100% supervision'.<sup>92</sup> Consultants were present all the time and he had to

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<sup>82</sup> Exhibit 446

<sup>83</sup> T6718 line 20 (Dr Hanelt); T7079 line 55, T7080 line 20 (Mr Allsopp)

<sup>84</sup> Exhibit 446

<sup>85</sup> Exhibit 424 DK4 Statement of Krishna

<sup>86</sup> Exhibit 424 para 14 Statement of Krishna

<sup>87</sup> T6465 line 30

<sup>88</sup> T7339 line 35 - 55

<sup>89</sup> T7340 line 1

<sup>90</sup> T7340 line 10

<sup>91</sup> T6532 line 30

<sup>92</sup> T6515 line 10, T6523 line 35

notify a consultant of any new case.<sup>93</sup> Dr Wilson said that 100% supervision may have been overstating it, but the supervision was very strong.<sup>94</sup> Dr Wilson said that, at the Toowoomba Hospital, if Dr Krishna was not supervised by orthopaedic surgeons, he was often supervised by two other Registrars, one of whom was in training, who were fairly well skilled in orthopaedic and traumatic surgery.<sup>95</sup> In time, Dr Krishna had done some minor fractures including minor compound fractures on his own.<sup>96</sup> But a consultant was always available to attend and assist if necessary at the Toowoomba Hospital.<sup>97</sup>

- 4.37 By comparison with Hervey Bay Hospital, the Toowoomba Hospital had two staff surgeons, Drs Punn and Ivers, as well as seven Visiting Medical Officers.<sup>98</sup>

### Appointment of Dr Dinesh Sharma

- 4.38 Dr Sharma was appointed a Senior Medical Officer at the Fraser Coast Health District in February 2003.<sup>99</sup> A condition of his employment also was that, as a District employee, he could be required to work within any facility in the District.<sup>100</sup> He was assigned to the Hervey Bay Hospital.
- 4.39 Dr Sharma has a similar background to Dr Krishna. He was educated in medicine in Fiji at the University of the South Pacific. He practised in a number of hospitals in Fiji as an orthopaedic registrar and, after also obtaining specialist registration in orthopaedics in 1998,<sup>101</sup> as a Consultant orthopaedic surgeon at Colonial War Memorial Hospital in Suva until January 2003.<sup>102</sup> Like Dr Krishna, in 1996 he received a diploma in orthopaedics from the Australian Orthopaedic Association.<sup>103</sup>
- 4.40 He first commenced employment in Australia when he was appointed to the Hervey Bay Hospital. This occurred in February 2003. Until recently, whilst he was employed at the Hervey Bay Hospital, he too was registered as a medical practitioner under the special purpose provisions of s135 of the Medical Practitioners Registration Act 2001. I shall say something about the form of that registration also, from time to time, in Chapter Six – Part C. It was known

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<sup>93</sup> T6515 line 10

<sup>94</sup> T7329 line 40, T7330 line 35

<sup>95</sup> T7330 line 25

<sup>96</sup> T7330 line 50

<sup>97</sup> T7330 line 45

<sup>98</sup> T6523 line 40

<sup>99</sup> Exhibit 357 DS8 Statement of Sharma

<sup>100</sup> Exhibit 357 DS8 Statement of Sharma

<sup>101</sup> Exhibit 444A TMH27 Statement of Hanelt

<sup>102</sup> Exhibit 357 Curriculum vitae DS1 Statement of Sharma

<sup>103</sup> Exhibit 38 para 10 North Giblin report

to the Medical Board, at the time of his first and each subsequent registration under s135, that he would be practising orthopaedic surgery.<sup>104</sup>

- 4.41 Before registering Dr Sharma, the Medical Board made no assessment of his skills and competence to enable it to safely conclude, as it was required to do under s135(2), that he had medical qualification and experience suitable for practising orthopaedic medicine at the Hervey Bay Hospital. I will say something more about that and its consequences in Chapter Six – Part C.
- 4.42 Dr Sharma did not believe that he was registered in Queensland as a specialist.<sup>105</sup> He knew that the Medical Board did not regard him as registered as a specialist. Dr Hanelt also did not believe that Dr Sharma was registered as specialist.<sup>106</sup>
- 4.43 No conditions were attached to his special purpose registration<sup>107</sup> or letter of appointment<sup>108</sup> requiring supervision.
- 4.44 In 2005, like Dr Krishna, Dr Sharma successfully completed the Australian Medical Council examination.<sup>109</sup> In June 2005, he was granted a general registration on supervised practice conditions. The conditions include practising in accordance with a supervised practice program for a period of 6 months.<sup>110</sup> This again was the first time supervision was imposed as a condition on his registration.

## Credentialing and privileging

### Credentialing and privileging requirements

- 4.45 As discussed earlier in this report,<sup>111</sup> the process of credentialing and clinical privileging is integral to patient safety.
- 4.46 The 2002 Queensland Health Credentials and Clinical Privileges for Medical Practitioners Policy and Guidelines<sup>112</sup> applied to the Fraser Coast Health Service District, as well as to the Bundaberg District. The relevant provisions of that policy and those guidelines have already been outlined in detail.<sup>113</sup> Importantly, they applied to all medical practitioners operating within the service district. The guidelines which set out the process by which the policy

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<sup>104</sup> Exhibits 360, 361, 362, 447

<sup>105</sup> T5676 line 20, T5678 line 20

<sup>106</sup> T6718 line 20 (Dr Hanelt)

<sup>107</sup> T5678 line 15 (Dr Sharma)

<sup>108</sup> Exhibit 357 attachment DS8 Statement of Sharma; T5679 (Dr Sharma)

<sup>109</sup> T5676 line 40 (Dr Sharma)

<sup>110</sup> Exhibit 358

<sup>111</sup> Chapter 3

<sup>112</sup> Exhibit 279

<sup>113</sup> Chapter 3 para 3.147-3.148, 3.171-3.173

was to be implemented,<sup>114</sup> required that all medical practitioners be credentialed and clinically privileged before completion of the appointment process and before making any admissions or commencing any treatment of any patient within the hospital.<sup>115</sup>

- 4.47 Under the policy, the District Manager, Mr Allsopp, was responsible for ensuring the process was in place and that all medical practitioners operating within the Fraser Coast Health Service District had their credentials and clinical privileges granted before they commenced work and periodically reviewed by a credentialing and privileging committee.<sup>116</sup> Dr Hanelt accepted that it was also his duty to consult with Mr Allsopp about such matters.<sup>117</sup>
- 4.48 A local Fraser Coast Health Service District policy,<sup>118</sup> which was written by the Director of Medical Services, Dr Hanelt<sup>119</sup> and which came into existence for Hervey Bay sometime after April 2003,<sup>120</sup> also applied to all senior clinicians, including Senior Medical Officers.<sup>121</sup> Under that policy, the District Manager, Mr Allsopp, was the delegated officer with responsibility for conferring clinical privileges on medical practitioners after recommendation from a credentialing and privileges committee.<sup>122</sup> The Director of Medical Services, Dr Hanelt, was responsible for convening a Credentials and Privileges Committee to undertake the review of credentials and recommend appropriate clinical privileges. Again the policy specifically applied to Senior Medical Officers.<sup>123</sup> Privileges granted under the local policy were subject to a three yearly review.<sup>124</sup>
- 4.49 There was no reason why, under each of the Queensland Health policy and local policy, clinical privileges could not have been limited or delineated by a requirement of supervision.

### Failure to credential and privilege

- 4.50 Despite the administrators, Mr Allsopp<sup>125</sup> and Dr Hanelt<sup>126</sup>, being aware of the need for credentialing and clinical privileging of all medical practitioners before they commenced service, none of the medical practitioners practising in the

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<sup>114</sup> Exhibit 279 para 2 Queensland Health Instruction accompanying the policy part

<sup>115</sup> Exhibit 279 para 6.1 Guidelines Exhibit 279

<sup>116</sup> Exhibit 279 para 2

<sup>117</sup> T6721 line 35

<sup>118</sup> Exhibit 444A attachment TMH35, Statement of Hanelt.

<sup>119</sup> Exhibit 444A para 67(i) Statement of Hanelt; T6725 line 10

<sup>120</sup> T6724 line 50; T6768 line 50 (Dr Hanelt)

<sup>121</sup> Exhibit 444A p1 attachment TMH35 Statement of Hanelt

<sup>122</sup> Exhibit 444A p2 attachment TMH35 Statement of Hanelt

<sup>123</sup> Exhibit 444A attachment TMH35 Statement of Hanelt

<sup>124</sup> Exhibit 444A, p2 attachment TMH35 Statement of Hanelt

<sup>125</sup> T7076 line 50 – 7077 line 10

<sup>126</sup> T6722 line 10, T6722 line 60 – 6723 line 10

Hervey Bay Hospital orthopaedic department were ever credentialed or privileged.<sup>127</sup>

- 4.51 An earlier committee, the Rural and Remote Privileging Committee, which had existed under an earlier policy, ceased to exist in or about 2001.<sup>128</sup> After that committee ceased to exist, no credentialing and privileging committee existed until late 2004.<sup>129</sup> Mr Allsopp stated that he assigned the management of the implementation of the policy to Dr Hanelt in or about 2002.<sup>130</sup>
- 4.52 I have already expressed my view that under the Queensland Health guidelines and local policy, the involvement of the relevant colleges was not mandatory. As set out above,<sup>131</sup> under the guidelines, the core membership of the committee had to comprise the medical superintendent of the facility and two other medical practitioners nominated by the District Manager.<sup>132</sup> In addition to the core membership, additional members were to be 'invited as required, depending on the size and complexity of the facility, with representation from relevant professional and other bodies as dictated by the principle of peer representation'.<sup>133</sup> The guidelines provided 'the District Manager will decide on the categories of variable membership of the committee'. The guidelines then specified several groups from which 'where appropriate' additional members were to be selected.<sup>134</sup> These were not limited to the relevant clinical/professional colleges<sup>135</sup> but included, relevantly, where appropriate, a representative from relevant clinical departments from larger facilities<sup>136</sup> and 'other medical practitioners co-opted as appropriate by the committee'.<sup>137</sup>
- 4.53 Similarly, under the local policy, the core members of the committee comprised the Director of Medical Services of each of the Fraser Coast Health Service District and Bundaberg Base Hospital and the Medical Superintendent of the Maryborough Hospital.<sup>138</sup> Again, in my view, under the local policy, input from the relevant colleges was only required to be invited by the Committee. It relevantly provided: 'In all instances the Committee will also invite input from the relevant Department Director and Specialty College'.<sup>139</sup>

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<sup>127</sup> T6632 line 5-20 (Dr Naidoo); T7617 line 5 (Dr Hanelt)

<sup>128</sup> T6721 (Dr Hanelt)

<sup>129</sup> T6725 (Dr Hanelt)

<sup>130</sup> T7077 line 20

<sup>131</sup> Chapter 3 paras 3.171 - 3.173

<sup>132</sup> Exhibit 279 s5.2 Guidelines

<sup>133</sup> Exhibit 279 s5.1 Guidelines

<sup>134</sup> Exhibit 279 s5.3 Guidelines

<sup>135</sup> Exhibit 279 first bullet point s5.3 Guidelines

<sup>136</sup> Exhibit 279 third bullet point s5.3 Guidelines

<sup>137</sup> Exhibit 279 last bullet point s5.3 Guidelines

<sup>138</sup> Exhibit 444A TMH35 p2 Statement of Hanelt

<sup>139</sup> Exhibit 444A TMH35 p2 Statement of Hanelt; T6770 line 30 (Dr Hanelt)

- 4.54 I later express the view in Chapter Six – Part C that the drawing up of a local policy was unnecessary; a district credentialing and privileging committee could have been set up under the Queensland Health policy and guidelines. It was, therefore, a waste of time and effort. Moreover, it oddly narrowed the core membership of the committee to the Directors of Medical Services of Bundaberg and Fraser Coast and the Medical Superintendent of Maryborough Hospital, none of whom were clinicians. It is difficult to see how any of them could have made a peer assessment of, for example, Dr Krishna or Dr Sharma.
- 4.55 As happened in relation to the credentialing and privileging process at the Bundaberg Base Hospital, the district administrators, in particular Dr Hanelt from about mid 2003<sup>140</sup> and then his delegate Dr Gopalan from about January 2004 through to 2005<sup>141</sup> attempted to get the Australian Orthopaedic Association and the Royal Australasian College of Surgeons to nominate a representative for membership of the credentialing and clinical privileging committee. The Australian Orthopaedic Association was requested for a nominee by letter dated 14 July 2003<sup>142</sup> and the Royal Australasian College of Surgeons in mid 2003.<sup>143</sup>
- 4.56 The evidence was that no response was received from the colleges<sup>144</sup> although by 15 July 2004 Drs Gopalan and Hanelt had learned that the Queensland branch of the Royal Australasian College of surgeons had been ‘swamped’ with applications from other area health services.<sup>145</sup> Accepting this to be correct,<sup>146</sup> the process was instigated too late for Drs Krishna or Sharma. Pursuant to the provisions of the Queensland Health policy, the process should have been completed before their appointments. Further, any difficulty, whenever encountered, did not excuse the failure to proceed with the credentialing and clinical privileging process at Hervey Bay, without college representation or input, by finding an alternative suitable variable member for the credentialing and privileging committee.
- 4.57 The underlying object of credentialing and privileging is to ensure patient safety. To achieve that object, it is essential that, before a doctor commences to serve at a hospital, he or she is assessed and his or her limitations in practice are clearly defined; and that the limitations on the practice at the hospital are also clearly defined.
- 4.58 Once that purpose is seen, it can also be clearly seen that it is better to have some process of credentialing and clinical privileging applied to a doctor before

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<sup>140</sup> T6781 line 40 (Dr Hanelt)

<sup>141</sup> T6781 line 50 – 6782 line 20 (Dr Hanelt)

<sup>142</sup> Exhibit 444A attachment TMH23 Statement of Hanelt

<sup>143</sup> T6781(Dr Hanelt)

<sup>144</sup> Exhibit 444A para 66 Statement of Hanelt; T6781 (Dr Hanelt); T7090 (Mr Allsopp); T5206 (Dr North)

<sup>145</sup> Exhibit 448 DWK 79 email Dr Gopalan to Drs Hanelt and Keating 15 July 2004

<sup>146</sup> Evidence was not given by the relevant colleges in relation to this issue

commencement of service, even one which does not comply with Queensland Health policy and guidelines or local policy, than to have none at all. But, in the case of Drs Krishna and Sharma, it would have been possible to comply with both, without the need for involvement of a representative from its Royal Australasian College of Surgeons, before either Dr Krishna or Dr Sharma commenced service.

- 4.59 In the absence of a Royal Australasian College of Surgeons nominee, approaches should have been made to local specialist surgeons<sup>147</sup> or a staff specialist from a larger hospital<sup>148</sup> or a visiting specialist.<sup>149</sup> Drs Mullen and Khursandi, each of whom was a registered orthopaedic surgeon practising within the Fraser Coast Health Service District, were ideally placed to assist in the process of credentialing and privileging.<sup>150</sup> A privileging committee consisting of the Drs Mullen and Khursandi, as well as Dr Naidoo, together, possibly with core members of the committee under the Queensland Health or local policy would have sufficed.<sup>151</sup>
- 4.60 Neither Mr Allsopp nor Dr Hanelt, nor for that matter Dr Naidoo, seem to have thought to involve such persons before either Dr Krishna or Dr Sharma commenced service or at any time during Drs Krishna's and Sharma's orthopaedic services at the hospital. Dr Hanelt said that he did not think to do so until the cessation of the orthopaedic department in mid 2005.<sup>152</sup>
- 4.61 The failure to apply any process of credentialing or clinical privileging to Dr Krishna or Dr Sharma before either commenced meant that each commenced without any limitation being imposed on what he could do and without any condition requiring supervision.
- 4.62 With the benefit of hindsight, Dr Hanelt admitted that when he could not get a college representative he should have proceeded with credentialing and privileging the relevant practitioners without any college representation. He suggested this would have been contrary to the policy.<sup>153</sup> However, he was mistaken about the requirements of the policy in this regard. Mr Allsopp recalled it being suggested at a Central Zone meeting of District Managers, at or about the time of the tilt train disaster,<sup>154</sup> that a possible option for getting the credentialing committees assembled was to go outside the policy and appoint surgeons or other specialists as appropriate to committees without nomination

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<sup>147</sup> T5206 line30, T5227 line 40 (Dr North)

<sup>148</sup> T5227 line 50(Dr North)

<sup>149</sup> T5227 line 55 (Dr North)

<sup>150</sup> T5151 (Dr North)

<sup>151</sup> T5151 line 40 – 60 (Dr North)

<sup>152</sup> T6724 line 20

<sup>153</sup> T6724 line 20

<sup>154</sup> 16 November 2004

by the colleges.<sup>155</sup> He thought he pursued the option with Dr Hanelt but did not know the outcome.<sup>156</sup>

- 4.63 Under the Queensland Health policy, Mr Allsopp had power to grant interim privileges. He said that he delegated this power to the Director of Medical Services, Dr Hanelt.<sup>157</sup> He said he did this when he assigned the management of the implementation of the policy to Dr Hanelt in or about 2002.<sup>158</sup> By a letter signed by Mr Allsopp to Dr Krishna dated 13 January 2003, Dr Krishna was granted interim privileges 'as per the advice of the Director of Medical Services'. However, these were very general and they were granted 'in Trauma Orthopaedics and minor elective Orthopaedics'. There is no evidence of Mr Allsopp or Dr Hanelt having granted any interim privileges for Dr Sharma, other than arranging for the scopes of service documents, referred to below, to be prepared.
- 4.64 Ultimately, the responsibility lay with Mr Allsopp to implement the credentialing and privileging process. Delegation of the actions necessary to implement the policy did not relieve Mr Allsopp from an obligation to ensure that implementation occurred.
- 4.65 Dr Hanelt said he had had discussions with Dr Keating about combining the credentialing and privileging process for the Bundaberg and Fraser Coast Health Service Districts because of the lack of success both districts had in obtaining college nominations<sup>159</sup> and to ensure a big enough and impartial core group.<sup>160</sup> However, no such committee formed until late 2004<sup>161</sup> and then only met in areas other than surgery.<sup>162</sup>
- 4.66 Mr Allsopp did not consider Dr Hanelt to have been derelict in failing set up a credentialing and privileging committee. However, Mr Allsopp agreed, in hindsight, that the hospital took too long to establish a credentialing and privileging committee.<sup>163</sup> Ideally, he said, it ought to have happened in 2002.<sup>164</sup> He said that he did not realise, until about January 2004, when Dr Naidoo prepared written scopes of practice, that neither Senior Medical Officer had had their scope of service documented.<sup>165</sup> But Mr Allsopp said that he understood that what procedures the Senior Medical Officers could do unsupervised, and which ones they could do only with supervision, had been

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<sup>155</sup> T7091

<sup>156</sup> T7091 line 55 – 7092 line 1

<sup>157</sup> T7077 line 10

<sup>158</sup> T7077 line 20

<sup>159</sup> T6723 line 40

<sup>160</sup> T6723 line 50

<sup>161</sup> T6725 line 20 (Dr Hanelt)

<sup>162</sup> T6782 line 40 (Dr Hanelt)

<sup>163</sup> T7079 line 20

<sup>164</sup> T7079 line 40

<sup>165</sup> T7083 line 50 – 7084 line 20

orally determined. He was unable to be specific about this.<sup>166</sup> At best, all of this demonstrates, in my opinion, a lack of understanding of the underlying purpose and, consequently, the essentiality of credentialing and privileging doctors before they commence service.

## Supervision

### The need for supervision

- 4.67 Even more so because their clinical skills and competence were never assessed by a process of credentialing and privileging, each of Drs Krishna and Sharma required supervision. Plainly, until that skill and competence was assessed, supervision should have been constant.
- 4.68 Thereafter, the level of supervision which each of Drs Krishna and Sharma required was the subject of differing views. However, all witnesses agreed that some level of supervision was necessary. As Dr Mullen said,<sup>167</sup> a lack of supervision of junior unqualified or under-qualified doctors leads to decision making which often results in outcomes which are not due to expected routine complications but due to complications from poor decision making or just not knowing what to do.
- 4.69 The level of supervision required may have varied, to some extent, between Drs Krishna and Sharma. In the case of Dr Krishna, although he had not progressed to a stage where he could be left unsupervised, he had obtained some Australian orthopaedic training and experience at the Toowoomba Hospital in the position of non-training Registrar. In the case of Dr Sharma, his appointment to the Hervey Bay Hospital was his first in the country. During the first year of Australian service, any overseas trained doctor, who is not registered as a specialist should, as a matter of prudence, have a supervisor present at all times in an operating theatre.<sup>168</sup>
- 4.70 It is ironic that the Queensland Medical Board, when it initially registered Drs Krishna and Sharma under the special purpose provisions of s135 of the *Medical Practitioners Registration Act 2001* did not include any requirement that they be supervised; yet later, when it came to register each of them for general practice, it required a period of practice under a supervised practice

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<sup>166</sup> T7083

<sup>167</sup> T5450 line 40

<sup>168</sup> T5138 line 50 – 5139 line 10 (Dr North)

program for a period of 6 months.<sup>169</sup> Dr Sharma, understandably, was surprised about these inconsistent requirements.<sup>170</sup>

- 4.71 Dr Sharma said that he was never told that it was a convention or condition of his employment as a Senior Medical Officer that supervision was required of him.<sup>171</sup>

### Scopes of service approved by Dr Naidoo

- 4.72 Sixteen months after the commencement of Dr Krishna and ten months after the commencement of Dr Sharma, Dr Hanelt, by a written memorandum dated 13 November 2003, requested Dr Naidoo, as Director of Orthopaedics, to provide him with some documentation in respect of the services provided by Drs Krishna and Sharma.<sup>172</sup> In evidence, Dr Hanelt said that he asked Dr Naidoo to assess the Senior Medical Officers as a pre-runner to the formal privileging process.<sup>173</sup> He said that the documentation to be produced by Dr Naidoo was intended to go to the privileging committee.<sup>174</sup> However, in the memorandum itself, Dr Hanelt is recorded as having requested the documentation 'due to the ongoing media and Australian Orthopaedic Association attention to Orthopaedic Services within this District and in particular the services provided by the Senior Medical Officers in orthopaedics'.<sup>175</sup> In the memorandum he said he needed documentation 'as a matter of urgency'. Dr Naidoo's evidence corroborated this as being the reason for the preparation of the documents, saying that he prepared the Scope of Service documents after the Australian Orthopaedic Association had shown an interest in the orthopaedic department.<sup>176</sup> Dr Naidoo said that the documents were presented to the Australian Orthopaedic Association to review as part of their investigation into what services the Senior Medical Officers were providing.<sup>177</sup> It seems plain from the memorandum and the evidence of Dr Naidoo that the reason why Dr Hanelt requested this documentation was his concern about the possibility of an unfavourable outcome resulting from media and Australian Orthopaedic Association attention.

- 4.73 In response to the request by Dr Hanelt, on 16 January 2004, Dr Naidoo provided to Dr Hanelt a memorandum attaching a written recommendation and Scopes of Service for Elective Orthopaedic Surgery and Orthopaedic Trauma

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<sup>169</sup> Exhibit 358

<sup>170</sup> T5677 line 45

<sup>171</sup> T5678 line 25-40

<sup>172</sup> Exhibit 431 attachment MMN5 Statement of Naidoo

<sup>173</sup> T6766 line 50

<sup>174</sup> T6767 line 5

<sup>175</sup> Exhibit 431 attachment MMN5 Statement of Naidoo

<sup>176</sup> T6628 line 40

<sup>177</sup> T6626 line 20

for both Dr Krishna<sup>178</sup> and Dr Sharma dated 1 January 2004.<sup>179</sup> In the recommendation for Dr Krishna's Scope of Service, Dr Naidoo wrote that, in making his recommendation, he had 'taken into consideration his CV outlining his previous experience, discussions and references from my orthopaedic colleagues from Toowoomba General Hospital, observation of his clinical and surgical practice and Orthopaedic Audits'.<sup>180</sup> In the recommendation for Dr Sharma's Scope of Service, he similarly wrote that, in making his recommendation he had 'taken into consideration his CV outlining his previous experience, discussions and references from orthopaedic colleagues, observation of his clinical and surgical practice and Orthopaedic Audits'.<sup>181</sup>

- 4.74 But, it is clear that Dr Naidoo's observation of Dr Krishna's surgery, at least, was very limited. Prior to and for the purposes of Dr Naidoo preparing the Scope of Service documents, a document was prepared summarising the orthopaedic surgery Dr Krishna had performed unsupervised and with consultant assistance for the period from 17 July 2002 to 19 November 2003. It disclosed that Dr Krishna had received consultant assistance on only four out of a total of 323 surgical procedures performed.<sup>182</sup> Although it purports on its face to have been authored by Dr Krishna, he denied he prepared it or knew who had prepared it.<sup>183</sup> In any event, both he<sup>184</sup> and Dr Naidoo<sup>185</sup> accepted that its contents were correct.
- 4.75 The Scopes of Service documents provided by Dr Naidoo for Drs Krishna and Dr Sharma for both Orthopaedic Trauma and Elective Orthopaedic Surgery dated 1 January 2004 are identical.<sup>186</sup>
- 4.76 Dr Naidoo also prepared a Scope of Service for Dr Sharma dated 1 January 2003 which is almost identical to the January 2004 version.<sup>187</sup> However, Dr Sharma did not commence at the Hervey Bay Hospital until March 2003.<sup>188</sup> There was no evidence to explain the circumstances under which the version dated 1 January 2003 was created. I am satisfied that no such document was prepared before January 2004.
- 4.77 Dr Naidoo said that he asked each Senior Medical Officer what procedures they had done in their previous employment and they were given the documents to read before they were submitted to Dr Hanelt.<sup>189</sup> Tellingly, Dr

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<sup>178</sup> Exhibit 313

<sup>179</sup> Exhibit 364

<sup>180</sup> Exhibit 431 attachment MMN5

<sup>181</sup> Exhibit 431 attachment MMN5

<sup>182</sup> Exhibit 431 pp 50, 51 attachment MMN5 Statement of Naidoo

<sup>183</sup> T6602 line 55

<sup>184</sup> T6603 line 35 - 45, 6604 lines 10 - 20

<sup>185</sup> T6628

<sup>186</sup> T6629 line 10 (Dr Naidoo)

<sup>187</sup> Exhibit 365

<sup>188</sup> T5706 line 20

<sup>189</sup> T6626 line 5

Naidoo also said that 'the document that I provided on their scope of service was not a certification of what they could do but based on what they indicated to me they had done in the past and my observations of some of the work based on their recommendations or their references they received from Toowoomba, and that's Dr Sharma's (sic) references, and also based on their post-operative review of patients'.<sup>190</sup> He stated that he thought that they were skilled enough to make a clinical judgment as to what they could deal with and consequently instructed them that they were to treat patients whom they thought were within their skill level.<sup>191</sup> If they could not handle the situation they were to call him, if he was not on leave, or, if he was on leave, they were to transfer the patients to another tertiary hospital.<sup>192</sup>

- 4.78 Dr Naidoo agreed that the language used in the references relating to Dr Krishna's previous employment in Toowoomba, upon which he purported to rely, was neutral<sup>193</sup> or unclear about any capacity to perform surgery unsupervised.<sup>194</sup> Much of what he learned about Dr Krishna's range of procedures, he said, he learnt from Dr Krishna himself.<sup>195</sup>
- 4.79 Dr Krishna gave evidence that Dr Naidoo discussed the Scope of Service with him and enquired whether there was anything that he was uncomfortable with.<sup>196</sup> Dr Krishna said that he had no input into the Scope of Service.<sup>197</sup> Dr Krishna said that before he received the 2004 Scope of Service documents, he had performed without supervision procedures which were subsequently categorised to be only performed with supervision.<sup>198</sup> He said that he was not earlier given a scope of service in as much detail as the 2004 document. When he arrived he was given a letter of a couple of paragraphs giving him privileges to 'do trauma cases within my scope and minor elective cases'.<sup>199</sup> It is likely that Dr Krishna was referring to the letter forwarded to him by the District Manager granting him interim privileges. The terms of the interim privileges granted, which I have already set out, were not quite as recalled by Dr Krishna. Nevertheless, Dr Krishna stated that he talked to Dr Naidoo after receiving the letter about what was meant by minor elective cases. He said Dr Naidoo told him they meant very simple things like arthroscopies, carpal tunnel

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<sup>190</sup> T6593 line 30

<sup>191</sup> T6593 line 40 - 45

<sup>192</sup> T6593 line 50 – T6594 line 1 (Dr Naidoo)

<sup>193</sup> T 6621, 6626 line 10

<sup>194</sup> T6620 line 55

<sup>195</sup> T6624, 6626 line 1

<sup>196</sup> T6467 line 15

<sup>197</sup> T6530 line 35

<sup>198</sup> T6488 line 40

<sup>199</sup> T6466 line 35 - 6367 line 1

- syndromes and bunion surgeries which he had done before.<sup>200</sup> He said it was left to him to determine what minor elective cases were to be done by him.<sup>201</sup>
- 4.80 Dr Sharma said that he did not have any discussions with Dr Naidoo about what should or should not be included in his Scope of Service documents nor about what was in it after it was given to him.<sup>202</sup> He also could not say with any certainty when he was given the Scope of Service documents.<sup>203</sup>
- 4.81 Even as at 1 January 2004, the process by which the Scope of Service documents were produced was deficient. First, no or no adequate assessment was made by Dr Naidoo of each of Dr Krishna or Dr Sharma. As stated, Dr Naidoo had not supervised Dr Krishna, except perhaps, at most, in the four operations in respect of which Dr Krishna recorded he had received assistance.<sup>204</sup> In his words, the document 'was not a certification of what they could do'.
- 4.82 Secondly, the assessment by Dr Naidoo alone was not appropriate. As Dr Hanelt acknowledged,<sup>205</sup> it increased the risk of mate credentialing mate and lessened the degree of impartiality in the process. More relevantly, as will become apparent, Dr Naidoo was not disinterested in the determination. The greater the scope of the work which each of Drs Krishna and Sharma could be seen to be capable of performing without supervision, the more excusable Dr Naidoo's failure to supervise either of them became. Dr Hanelt gave evidence of recognising the need for a committee assessment<sup>206</sup> and, if necessary, proceeding without input from college representatives.<sup>207</sup> This recognition is also reflected in the local policy drafted by Dr Hanelt.<sup>208</sup>
- 4.83 Dr Hanelt said that he understood that the scope of practice of Drs Krishna and Sharma would be restricted to that which Dr Naidoo considered them competent to perform.<sup>209</sup> However, he did not take any steps to ensure that this was the case. He did not know whether Drs Krishna and Sharma had been given a copy of their Scopes of Service document,<sup>210</sup> although, it seems they had.<sup>211</sup>

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<sup>200</sup> T6466 line 50

<sup>201</sup> T6467 line 5

<sup>202</sup> T5704 line 50 – 5705 line 10, 5710 line 30

<sup>203</sup> T5710 line 35

<sup>204</sup> Exhibit 431pp 50, 51 attachment MMN5 Statement of Naidoo

<sup>205</sup> T6724 line 1, T4139 line 35 (Dr Nydam); T5206 line 35 (Dr North)

<sup>206</sup> T 6722 line 40, 6766

<sup>207</sup> T 6766 line 15

<sup>208</sup> Exhibit 444A THM 35 p2. As stated, under the local policy the District Manager was to convene a Credentials and Privileges Committee comprising a core membership that did not include a representative of the relevant college. The relevant colleges are merely invited to provide input. Also T6770 line 30 (Dr Hanelt)

<sup>209</sup> T6767 line 15

<sup>210</sup> T6728 line 1 (Dr Hanelt)

<sup>211</sup> In the case of Dr Sharma, the fact that a copy was given to Dr Sharma is clear but not when: see T5704. In the case of Krishna, there was no direct evidence of him receiving a copy but evidence certainly implied he had received a copy of it: T6477 line 20, 6479 line 50, 6480 line 1, 6481, 6488 (Dr Krishna)

- 4.84 The Nurse Unit Manager of Operating Theatres, Nurse Erwin-Jones said that she did not receive a copy of either Scope of Service document. She gave evidence that ‘when Drs Krishna and Sharma had been with the service a little while,’ she had asked Dr Hanelt what the limitations of their surgery were. She said that Dr Hanelt, in response, advised her orally that the Senior Medical Officers could perform ‘any type of surgery, excluding joint replacement surgery’.<sup>212</sup> She would have liked to have had the written Scope of Service documents available to her when booking surgery for Drs Krishna and Sharma. She did not book in any joint replacement surgery on her understanding that this was outside the scopes of practice of the Senior Medical Officers. Otherwise, however, she booked in anything else.<sup>213</sup> She said that she was never given any written list of procedures which either Dr Krishna or Sharma were entitled to perform.<sup>214</sup>
- 4.85 Dr Mullen said that he also never saw the Scope of Service documents. He did not know they existed.<sup>215</sup>

#### **Differing views of the procedures which Drs Krishna and Sharma could perform**

- 4.86 Dr Krishna gave evidence that he felt confident doing unsupervised most of the procedures that he had been certified as capable of performing unsupervised but not all of them.<sup>216</sup> He also said that he would have been happier<sup>217</sup> and more confident in what he was doing,<sup>218</sup> if he had had more supervision. He admitted that he needed more training.<sup>219</sup>
- 4.87 Dr Sharma gave evidence of a number of procedures, included within his 2004 Trauma Scope of Service document as not requiring supervision, which he felt, at the time, were outside his competence to perform independently. He had not done them before and the procedures were, he thought, too complex.<sup>220</sup> Those procedures were in respect of an ACJ dislocation, acetabulum fracture simple, supracondylar intercondylar fracture simple and a distal tibial fracture simple. He could not explain why Dr Naidoo would have formed the opinion that he could perform these procedures without supervision.<sup>221</sup> He identified other procedures, specified as not requiring any supervision, that he also thought may have required supervision, depending upon the type of fracture,<sup>222</sup>

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<sup>212</sup> T5402 line 50

<sup>213</sup> T5407 line 20

<sup>214</sup> T5407 line 35

<sup>215</sup> T5779 line 55

<sup>216</sup> T6477 line 40

<sup>217</sup> T6477 line 45

<sup>218</sup> T6479 line 30

<sup>219</sup> T6479 line 15

<sup>220</sup> Exhibit 364; T5706 line 50 – 5707 line 10

<sup>221</sup> T5707 line 15

<sup>222</sup> T5707 line 25

or which he would have been happier with supervision even though he probably could have performed them.<sup>223</sup>

- 4.88 Dr Sharma also gave evidence of a number of procedures included in his 2004 Elective Surgery Scope of Service document which he felt were outside his competence to perform independently.<sup>224</sup> Those included the procedures listed in respect of a rotator cuff tendonitis/rupture simple, wrist anthropathy and subtalar osteoarthritis anthropathy. Dr Sharma said he would have made the same comments about his 2003 Scope of Service documents.<sup>225</sup> Dr Sharma stated he did not do any of the procedures in respect of which he admitted he required supervision.<sup>226</sup>
- 4.89 Dr Wilson, the Othopaedic surgeon under whom Dr Krishna practised in Toowoomba, gave evidence of his assessment of Dr Krishna's competence to perform the procedures listed in his Scope of Service documents. Dr Wilson assessed Dr Krishna as more than adequate in his ability to assess patients.<sup>227</sup> However, Dr Wilson said that he would remove from the Scope of Service documents a number of procedures, approved by Dr Naidoo as not requiring supervision, in respect of which he believed Dr Krishna would have required supervision. From the Trauma Scope of Service list, Dr Wilson said he would remove from the unsupervised list of procedures those in respect of a scaphoid compound fracture, fractured clavicle, ACJ dislocation, simple acetabulum fractures, midtarsal fracture/dislocation, tibial plateau fracture and phalangeal fractures involving vascular injuries.<sup>228</sup> In all of these procedures, in his opinion, Dr Krishna required supervision.
- 4.90 Dr Wilson would have removed a number of procedures from the Elective Surgery Scope of Service list.<sup>229</sup> As a general statement, surgery requiring more than day surgery, he said, should have required supervision.<sup>230</sup> More specifically, he would have excluded from the procedures approved by Dr Naidoo as not requiring supervision those in respect of a rotator cuff tendonitis/rupture simple, Baker's cyst, wrist anthropathy, extensor tendon transfer, fracture non-unions, hallux valgus bunionectomy and metatarsal osteotomy, subtalar osteoarthritis, knee internal derangement meniscal repair and knee internal derangement ACL/PCL reconstruction.<sup>231</sup> Two of these procedures, and another specified in the Scope of Service document as requiring supervision, Dr Wilson stated, should have been done only by a

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<sup>223</sup> T5707 line 40, 5708 line 25

<sup>224</sup> Exhibit 364; T5708 line 9

<sup>225</sup> T5709

<sup>226</sup> T5710 line 40

<sup>227</sup> T7345 line 20

<sup>228</sup> T7331 line 10 – 7335 line 50; also highlighted in Exhibit 482, attachment B, Statement of Wilson Exhibit 482

<sup>229</sup> T7336 line 1

<sup>230</sup> T7336 line 30

<sup>231</sup> T7336 – 7338; Also highlighted Exhibit 482, attachment B, Statement of Wilson

consultant. These were a recurrent anterior dislocation, subtalar osteoarthritis and subtalar calcaneo-cuboid arthrodesis.<sup>232</sup>

- 4.91 Dr Mullen said that he had had limited opportunity to observe and assess either Dr Krishna or Dr Sharma because they worked independently of him and were rostered on-call at times different from his.<sup>233</sup> However, based upon his limited observations and what he knew of their level of experience he would have excluded from each of Drs Krishna's and Sharma's unsupervised trauma list a number of procedures which he thought ought not to have been performed without supervision. These were those in respect of a clavicle fracture, ACJ dislocation, medial epicondyle, lateral condyle, supracondylar, lunate/peri lunate fracture or dislocation, lunate peri lunate fracture or dislocation, scaphoid, phalanges, acetabulum fracture simple, intertrochanteric per trochanteric high subtrochanteric fracture, supracondylar intercondylar fracture simple, tibial plateau fracture simple and severed digital nerve.<sup>234</sup>
- 4.92 Dr Mullen also would remove from the unsupervised elective surgery list procedures in respect of rotator cuff tendonitis/rupture simple, Dupuytren contracture, ganglion, bursa, Bakers Cyst, extensor tendon rupture thumb, wrist arthropathy, fracture non unions, hallux valgus, subtalar osteoarthritis and arthropathy, knee effusion, knee infection osteoarthritis, knee internal derangement.<sup>235</sup>
- 4.93 Dr North, who had not observed either Dr Krishna or Dr Sharma performing surgery, was understandably conservative in his assessment of what either should have been permitted to do unsupervised. He excluded twenty two procedures from the trauma list of procedures approved to be performed by Dr Krishna without supervision.<sup>236</sup> These comprised all the procedures removed by Dr Mullen with the exception of phalanges and intertrochanteric, per trochanteric and high subtrochanteric fractures. Dr North described the approval of one procedure, an ORIF for an acetabulum or hip socket fracture, without supervision, as 'ridiculous'.<sup>237</sup> Dr North also removed eight procedures approved to be performed without supervision, also removed by Dr Mullen, from the elective surgery list. Dr North said that, without supervision, the Senior Medical Officers should have undertaken only surgical procedures able to be done by a seriously experienced general practitioner.<sup>238</sup> According to Dr North, these procedures may have included simple cuts, haematomas or manipulation of closed fractures. They should not have included manipulation

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<sup>232</sup> T7337 line 5, 7338 line 1-10 (Dr Wilson)

<sup>233</sup> T5780 line 5, 5814 line 55

<sup>234</sup> T5815 - 5816 and circled on Exhibit 365 (A of B)

<sup>235</sup> T5817 - 5818 and circled on Exhibit 365 (B of B)

<sup>236</sup> Exhibit 313, T5141 - 5142 (Dr North)

<sup>237</sup> Exhibit 313 para 2

<sup>238</sup> T5139 line 40

of compound fracture, internal fixation or open bone surgery.<sup>239</sup> Ideally, their participation in orthopaedic and fracture outpatients clinics also ought to have been fully supervised.<sup>240</sup> They should, at least, have had easy access to rapid specialist response.<sup>241</sup>

- 4.94 Dr Scott Crawford, an orthopaedic surgeon who gave evidence of his review a number of patients treated by the Senior Medical Officers, was not asked to comment upon all of the procedures in the Scope of Service documents. However, a number of procedures on the elective surgery list relevant to the patients about whom he gave evidence, he said, ought to have been observed by an orthopaedic surgeon for up to half a dozen times before being allowed to be done without supervision.<sup>242</sup> Those procedures were rotor cuff tendonitis and rupture simple, CTS, Dupuytren's contraction, ganglion bursar Baker's cyst, MTPJ arthrodesis and hammer toes arthrodesis.
- 4.95 It is unnecessary to make findings preferring the view of one or more of the independent orthopaedic surgeons over that of the others. What emerges clearly is that the Scope of Service documents grossly over estimated the skill and competence of each of Drs Krishna and Sharma. Even more telling was the evidence I referred to earlier, of Dr Naidoo that he instructed Drs Krishna and Sharma that they were to treat patients whom they thought were within their skill level and whom they could deal<sup>243</sup> and the fact that, from time to time, he left them in positions where they were obliged to perform surgery which they felt was beyond their competence. The consequences of this are discussed below. But first it is relevant to say how Dr Naidoo's absences contributed to those dangerous situations.

### Absences of Dr Naidoo

- 4.96 Between 1 January 2000 and 13 May 2005, Queensland Health recorded the following approved leave for Dr Naidoo:

Recreation Leave	138 days
Sick leave	111.5 days
Long Service Leave	45 days
Conference	21 days
SARAS Leave	15 days
Special Leave WOP	14.75 days
Study Leave	40 days
External training	20 days
Breavement	5 days

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<sup>239</sup> T5139

<sup>240</sup> T5146 line 30 (Dr North)

<sup>241</sup> T5146 line 40 (Dr North)

<sup>242</sup> T6300 line 50 – T6302 line 25

<sup>243</sup> Exhibit 431 para 4.14 Statement of Naidoo, T6593 line 40 – T6594 line 10

Concessional	2 days
Special Response	3 days

4.97 In total, Dr Naidoo was on leave approved by Queensland Health for 415 days for this period.<sup>244</sup> In addition, Dr Naidoo has sworn that he had further leave approved which the Human Resources Department at Hervey Bay Hospital failed to record.<sup>245</sup>

4.98 Following the commencement of Dr Krishna as a Senior Medical Officer on 20 July 2002 until 13 May 2005, Dr Naidoo was absent from the hospital on the following approved leave:

Recreation Leave	69 days
Sick Leave	66 days
Long Service Leave	10 days
Conferences	11 days
SARAS Leave	15 days
Study Leave	40 days
External Training	20 days
Concessional	1 day
Special Response	1 day

In total, during that period, Dr Naidoo's approved leave was 233 days.<sup>246</sup>

4.99 Much of this leave also was in blocks of continuous leave including the following periods: 13 December 2002 to 14 February 2003 (9 weeks); 1 March 2004 to 2 April 2004 (5 weeks); 4 August 2004 to 8 October 2004 (3 weeks); 29 November 2004 to 17 December 2004 (3weeks); 21 February 2005 to 24 March 2005 (5 weeks); and 18 April 2005 to present.

4.100 There was evidence on which it could be concluded that Dr Naidoo was absent for greater periods than the above approved leave. Dr Naidoo gave evidence that it was his usual practice to travel from his residence in Brisbane to Hervey Bay at 5:00am on Monday morning so he would arrive at work at 9:00am and return to Brisbane on Friday, leaving Hervey Bay Hospital about 4:00pm.<sup>247</sup> However, there was clear evidence of Dr Naidoo having arrived at Hervey Bay much later than 9:00am and leaving much earlier than 4:00pm and Dr Naidoo in cross-examination was forced to concede that those times varied.<sup>248</sup> Nurse Erwin-Jones, Nurse Unit Manager for Operating Theatres said that, if he was not on-call on the weekend, it was common practice for Dr Naidoo to regularly

<sup>244</sup> Exhibit 444A attachment B

<sup>245</sup> Exhibit 504

<sup>246</sup> Exhibit 444A attachment B

<sup>247</sup> T6598 line 30

<sup>248</sup> T6620 line 5

leave the District on Friday mid afternoon and not return until Monday lunchtime.<sup>249</sup>

- 4.101 Refueling records for the motor vehicle provided to Dr Naidoo by Queensland Health for his exclusive use indicate that the car was refueled at a location away from the Hervey Bay Hospital district at a time when Dr Naidoo should have been on duty at the Harvey Bay Hospital. Dr Hanelt provided the Commission with a schedule for the period from 18 July 2002 to 26 June 2005, which details the time, date, odometer reading and location of refueling of Dr Naidoo's motor vehicle. It revealed that the motor vehicle was in Brisbane or elsewhere, at a time when, according to the Human Resources department records, Dr Naidoo was supposed to be on duty. Details of these are:

Day	Date	Time	Location
Friday	16.08.02	15:01	Forest Glen
Monday	19.08.02	8:50	Forest Glen
Wednesday	04.09.02	16:10	Gympie
Monday	16.09.02	9:49	East Brisbane
Monday	21.10.02	10:06	Gympie
Friday	08.11.02	13:51	East Brisbane
Monday	11.11.02	8:08	East Brisbane
Friday	15.11.02	11:44	Cannon Hill
Wednesday	27.11.02	9:43	East Brisbane
Thursday	12.12.02	16:50	Gympie
Friday	09.05.03	16:33	Caboolture
Friday	06.06.03	18:44	East Brisbane
Thursday	21.08.03	12:28	Cannon Hill
Tuesday	26.08.03	7:25	East Brisbane
Thursday	28.08.03	12:51	Milton
Wednesday	03.09.03	15:04	East Brisbane
Wednesday	31.12.03	18:04	Cannon Hill
Sunday	04.01.04	16:36	East Brisbane
Friday	13.02.04	14:41	Forest Glen
Friday	27.02.04	17:04	East Brisbane
Friday	23.04.04	7:21	Hamilton
Friday	07.05.04	16:57	Gympie
Friday	04.06.04	16:51	Gympie
Monday	07.06.04	5:56	East Brisbane
Monday	15.11.04	8:50	Gympie
Monday	04.04.05	8:01	Gympie

<sup>249</sup> T5406 line 50

He also travelled only 319 kms between Thursday 21.08.03 and Tuesday 26.08.03, so he could not have travelled to Hervey Bay and return so as to have been there on 22.08.03 or 25.08.03; only 322 kms between Tuesday 26.08.03 and Thursday 28.08.03, so could not have travelled to Hervey Bay and return so as to have been there on 27.08.03; only 328 kms between Thursday 28.08.03 and Wednesday 03.09.03, so he could not have travelled to Hervey Bay and return so as to have been there on 29.08.03, 1.09.03 or 2.09.03; only 307 kms between Saturday 27.12.03 and Wednesday 31.12.03, so he could not have travelled to Hervey Bay and returned so as to have been there on 29.12.03 and 30.12.03; only 370 kms between Wednesday 31.12.03 and Sunday 04.01.04, so he could not have travelled to Hervey Bay and returned so as to have been there on 02.01.04

4.102 This information is limited to investigations based on petrol purchases but reveals that Dr Naidoo arrived late for work on nine occasions, left early on ten occasions and was absent from his place of duty when he should have been there on 11 days.

4.103 Dr Naidoo acknowledged that there were occasions when he arrived late or left work early. He explained that he worked throughout his lunch break, organised in-service meetings, regularly began work before rostered to start, and often took work home without payment. He also said that traffic had contributed to his late arrival at the hospital.<sup>250</sup> Dr Naidoo also said that he was on approved leave on 27 February 2003, 11 August to 15 August 2003, 22 August 2003, 25 August to 29 August 2003, 1 September to 3 September 2003, 27 January 2004 to 30 January 2004, 27 February 2004, 13 August 2004, 30 August 2004 to 1 September 2004, 2 September 2004 and 23 December 2004 but the Human Resources department failed to record the leave. Dr Naidoo provided some documentary evidence (eg. medical conference documentation and rosters in which he is noted to have been on leave) in support of his contention in regard to some of the above leave.<sup>251</sup>

4.104 Telephone records <sup>252</sup> of a mobile phone used by Dr Naidoo also reveal that on the following dates Dr Naidoo was at a location away from the Hervey Bay Hospital district at a time when he should have been on duty. Dr Naidoo said that he did not share the phone with his family.<sup>253</sup>

Monday 19.01.04

Thursday 22.01.04

Friday 23.01.04

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<sup>250</sup> Exhibit 504 Supplementary Statement of Dr Naidoo

<sup>251</sup> Exhibit 504 Supplementary Statement of Dr Naidoo

<sup>252</sup> Exhibit 435

<sup>253</sup> T6599 line 30

February 27.02.04

Friday 21.01.05

Thursday 03.02.05

Friday 04.02.05

- 4.105 Dr Naidoo contended that apart from 19 January 2004 on which day he believes he was at work, roster documents showed that he was on leave for the other days but the Human Resources Department failed to record the leave.<sup>254</sup>
- 4.106 Given the question raised by Dr Naidoo about the accuracy of the Human Resources Department records there is a need for some further investigation before conclusively determining the times when, between August 2002 and February 2005, Dr Naidoo was in Brisbane or otherwise absent from his place of employment without approved leave or absent during some of the normal working hours when those whom he should have been supervising may have needed him.<sup>255</sup>
- 4.107 But accepting, for present purposes that the records of the Human Resources Department understate his approved leave, Dr Naidoo, nevertheless, was absent from the hospital for vast periods. Whether legitimate or illegitimate, the mere fact that Dr Naidoo was absent from the hospital for these periods and so frequently, and was difficult to contact, had serious consequences in respect of supervision of Drs Krishna and Sharma who required supervision. As Dr Naidoo himself accepted, while he was on leave, the Senior Medical Officers were mostly left unsupervised and this was not ideal.<sup>256</sup> Nurse Erwin Jones said the same.<sup>257</sup>
- 4.108 As Director of Orthopaedics, Dr Naidoo also was responsible for co-ordinating and managing the provision of orthopaedic services within the District. When he was away the level of orthopaedic service dropped.<sup>258</sup> There was inadequate coverage for major elective orthopaedic work or anything except work which was plainly, on some objective judgment, within the competence of Drs Krishna and Sharma.<sup>259</sup> Nurse Erwin-Jones said Dr Naidoo's absences affected the ability to manage trauma patients.<sup>260</sup>

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<sup>254</sup> Exhibit 504, Supplementary Statement of Naidoo. Also Exhibit 444B pp 2, 3 supplementary Statement of Hanelt

<sup>255</sup> There was some evidence that Dr Naidoo was known to have often done on-call work from Brisbane. But this was only hearsay evidence. There was no direct evidence to support a finding to this effect. Exhibit 329 para 31 Statement of Erwin Jones, T5408 line 20; T6758 line 30 (Dr Hanelt)

<sup>256</sup> T6591 line 1 - 10

<sup>257</sup> T5406 line 1 - 10

<sup>258</sup> T6736 line 15

<sup>259</sup> T6736 line 30

<sup>260</sup> Exhibit 329 para 42 Statement of Erwin-Jones; T5401 line 15

## Patient P430

- 4.109 An early occasion when the unavailability of Dr Naidoo directly impacted upon the interests of one of Dr Naidoo's own patients involved patient P430. Dr Mullen gave evidence of having been asked on 2 August 2000<sup>261</sup> by nursing staff, during one of his weekly ward rounds, to see P430.<sup>262</sup> The patient was an elderly woman who had been admitted about 10 days previously with a fractured arm. An initial plaster had been then applied. The patient suffered dementia and moved a lot. As a result the plaster had become removed and, according to the patient's notes,<sup>263</sup> the bone had become protruded causing an open wound. In the patient's notes, a nurse had recorded on 27 July 2000: '1340 hours: broken area of skin noted over fracture'.<sup>264</sup> On 27 July 2000, Dr Naidoo took the patient back into theatre. He placed a dressing and a new plaster on wound.<sup>265</sup> Thereafter, Dr Naidoo had been unavailable to examine the patient for several days.<sup>266</sup>
- 4.110 When Dr Mullen examined the patient on 2 August 2000, he found that the patient had an open wound with a protruding bone. The wound was severely infected and the patient was very sick.<sup>267</sup> The patient's muscle, Dr Mullen said was and had been dead for several days.<sup>268</sup> The information given to Dr Mullen was that, in the period after Dr Naidoo had carried out the second procedure, staff had tried to contact Dr Naidoo to seek advice on the care of the patient and had had difficulty doing so.<sup>269</sup> The patient's notes showed that Dr Naidoo was contacted by phone on the 29 and 30 July 2000 and advised that the patient was very unwell and deteriorating.<sup>270</sup> According to a summary prepared by Dr Mullen, Dr Naidoo was also informed, at least on the 29 July 2000, that the bone was able to be seen and bandages were soaked with fluid.<sup>271</sup> Thereafter, according to Dr Naidoo, from 31 July 2000 to 2 August 2000, he had been on leave.<sup>272</sup> Dr Mullen was not aware of Dr Naidoo having been on scheduled leave.<sup>273</sup>
- 4.111 In Dr Mullen's opinion, the treatment by Dr Naidoo on the 27 July 2000 was insufficient and negligent.<sup>274</sup> Once the skin was breached, there was risk of

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<sup>261</sup> T5448 line 30

<sup>262</sup> T5447 line 9

<sup>263</sup> T6694 line 10 (Dr Naidoo)

<sup>264</sup> T6694 line 10 (Dr Naidoo)

<sup>265</sup> Exhibit 330 para 8 Statement of Mullen

<sup>266</sup> T5448 line 1-20

<sup>267</sup> Exhibit 330 para 8 Statement of Mullen

<sup>268</sup> T5452

<sup>269</sup> Exhibit 330 para 9 Statement of Mullen

<sup>270</sup> T6696 line 10 – 20 (Dr Naidoo)

<sup>271</sup> T6697 line 30 (Dr Naidoo)

<sup>272</sup> Exhibit 431 para 8.12 Statement of Naidoo

<sup>273</sup> T5448 line 10 (Dr Mullen)

<sup>274</sup> T5449 line 20

infection.<sup>275</sup> The wound at that time should have been widely opened and the fracture stabilised to prevent the bone from continuing to move.<sup>276</sup> Dr Naidoo denied this. Contrary to the patient's notes, he said that the bone was not an open wound when he had taken the patient back to theatre.<sup>277</sup> He said that, although the splintage procedure was not ideal, open reduction and internal fixation with a plate and screws would have failed because of the nature of the fracture and the extent of the patient's osteoporosis and dementia.<sup>278</sup> He said that, the ideal procedure would have been an intramedullary nail with some supplementary fixation but the equipment for such procedure was not available in Hervey Bay.<sup>279</sup>

- 4.112 Dr Mullen contacted Dr Hanelt and brought to Dr Hanelt's attention what he said was Dr Naidoo's unacceptable care of the patient.<sup>280</sup> He told Dr Hanelt that the patient needed to go to theatre immediately.<sup>281</sup> Dr Hanelt agreed with Dr Mullen doing this.<sup>282</sup> Dr Mullen sought to contact Dr Naidoo. After a number of attempts, Dr Mullen spoke to Dr Naidoo by telephone shortly before theatre. Dr Naidoo said that he was not available to do the operation himself.<sup>283</sup> He agreed to Dr Mullen taking over the patient and proceeding with the operation.<sup>284</sup>
- 4.113 Dr Mullen took the patient to theatre. He stabilised the situation. He removed a large amount of dead and infected arm muscle and the radial nerve which had been damaged and was non viable.<sup>285</sup> He then applied an external fixated frame and stabilised the fracture.<sup>286</sup>
- 4.114 Ultimately, Dr Mullen's intervention did not save the patient's arm. The patient's arm had to be amputated about 2 weeks later.<sup>287</sup> Dr Mullen said that he had never seen a case study where a low velocity closed fracture of the humerus in an old patient had ended up in amputation of the limb.<sup>288</sup> Dr Naidoo agreed with this observation.<sup>289</sup> Dr Mullen was in no doubt that the amputation had been caused by the neglect and delay in treatment by Dr Naidoo.<sup>290</sup>

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<sup>275</sup> T5448 line 50 – 5449 line 10

<sup>276</sup> T5449 line 1 - 20

<sup>277</sup> T6694

<sup>278</sup> Exhibit 431 paras 8.9, 8.10 Statement of Naidoo; T6693

<sup>279</sup> Exhibit 431 para 8.11 Statement of Naidoo

<sup>280</sup> T6752 line 10 (Dr Hanelt)

<sup>281</sup> Exhibit 330 para 10 Statement of Mullen

<sup>282</sup> Exhibit 330 para 11 Statement Mullen

<sup>283</sup> T 5451 line 40 (Dr Mullen)

<sup>284</sup> T5451 line 40 (Dr Mullen); Exhibit 330 para 12 Statement of Mullen

<sup>285</sup> T5451 line 50 (Dr Mullen)

<sup>286</sup> T5451 line 55 (Dr Mullen)

<sup>287</sup> Exhibit 330 para 13, Statement of Mullen

<sup>288</sup> T5450 line 5

<sup>289</sup> T6698 line 5

<sup>290</sup> Exhibit 330 paras 6–13 Statement of Mullen; T5450 line 10 (Dr Mullen)

- 4.115 Dr Hanelt, who was not an orthopaedic surgeon, was reluctant to attribute blame to Dr Naidoo. After a review of the clinical notes, he stated that the case was a particularly difficult management problem with the patient continuously removing casts, dressings and external fixateurs. He thought that the ultimate need for amputation could have resulted from a number of treatment options.<sup>291</sup> He said that he spoke to Dr Naidoo when he returned about his clinical management of the patient and appropriate handover of patients if he was not available.<sup>292</sup> Otherwise, Dr Hanelt found the explanation of Dr Naidoo about his clinical treatment very logical and quite convincing.<sup>293</sup> He said that he remained in a position, even at the time he gave evidence, of being unsure whose assessment was correct, Dr Mullen's or Dr Naidoo's.
- 4.116 I accept that this patient's case was difficult because of her co-morbidities. However, I find, as recorded in the patient's notes, that on the 27 July 2000, when Dr Naidoo took the patient back to theatre, the fracture had broken the skin. I also accept the evidence of Dr Mullen that the care of Dr Naidoo at that time and subsequently was inappropriate and that the delay contributed to the poor outcome.<sup>294</sup> At the very least, Dr Naidoo should have made arrangements for the patient to be attended to when he was informed<sup>295</sup> on the 29 July 2000 that the bone was able to be seen medially. As Dr Naidoo accepted, he also should have made arrangements for the patient to be looked after when he went on leave.<sup>296</sup>

### Lack of supervision

- 4.117 Dr Naidoo's absences plainly restricted his capacity to supervise junior doctors, especially Drs Krishna and Sharma.
- 4.118 Dr Sharma said that he had a clinic on the same day as Dr Mullen and on many occasions took the advice of Dr Mullen in the same clinic.<sup>297</sup> Generally, however, Dr Mullen, who, until the arrival of a locum orthopaedic surgeon, Dr Kwon, in January 2005, was the only other registered orthopaedic specialist practising at the Hervey Bay Hospital, was unable to provide adequate supervision to either Senior Medical Officer due to his limited sessions at the hospital.<sup>298</sup> Dr Hanelt acknowledged that he was aware of this.<sup>299</sup> Dr Khursandi, who was a Visiting Medical Officer in orthopaedics at the Maryborough Base hospital, rarely visited Hervey Bay Hospital.

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<sup>291</sup> Exhibit 444A para 88(i) Statement of Hanelt

<sup>292</sup> T6752 line 50

<sup>293</sup> T6753 line 5

<sup>294</sup> T5453 line 25

<sup>295</sup> T6697 line 35 (Dr Naidoo)

<sup>296</sup> T6698 line 35, 55

<sup>297</sup> T5696 line 1

<sup>298</sup> Exhibit 424 para 23 Statement of Krishna

<sup>299</sup> T6725 line 55 – 6726 line 10

- 4.119 According to Dr Mullen, throughout the time he visited the hospital, a problem always existed with Dr Naidoo being unavailable to supervise junior staff.<sup>300</sup> Dr Mullen said that, because of his concerns about supervision, he did all his own outpatient's clinics and all his own theatre sessions himself.<sup>301</sup> He did not allow other doctors to do surgery on any of his patients without him being present.<sup>302</sup> Teaching and learning opportunities for junior doctors were virtually non-existent. I accept Dr Mullen's evidence in these respects.
- 4.120 As noted above, the document prepared, prior to and for the purposes of Dr Naidoo preparing the Scope of Service documents and which Dr Naidoo<sup>303</sup> acknowledged to be correct, showed that Dr Krishna received consultant assistance in only four occasions out of the total of 323 surgical procedures performed.<sup>304</sup> The others he performed unsupervised. In a memorandum dated 2 October 2002, only nine weeks after Dr Krishna had been at the Hervey Bay Hospital, Dr Naidoo indicated to the waiting list co-ordinator that Dr Krishna could do elective cases that he is willing to do without his supervision.<sup>305</sup>
- 4.121 Effectively, as Dr Naidoo also acknowledged,<sup>306</sup> Dr Krishna and Dr Sharma were practising orthopaedic surgery at the Hervey Bay Hospital unsupervised.
- 4.122 Nurse Erwin-Jones, the Nurse Unit Manager for Operating Theatres, said that the absences of Dr Naidoo consistently left holes in the roster, particularly on-call, and left inadequate supervision for the Senior Medical Officers.<sup>307</sup> Nurse Erwin-Jones said that the Senior Medical Officers tried to work within their limitations but unfortunately sometimes got into a position of not being able to control that because the surgery was more complex than first expected and they were unsupervised.<sup>308</sup> She said that the Senior Medical Officers tried to obtain assistance from Dr Naidoo but this was not forthcoming<sup>309</sup> even during normal working hours.<sup>310</sup> On three or four occasions,<sup>311</sup> Nurse Erwin-Jones said she overheard Dr Krishna try to obtain assistance, from Dr Naidoo or, on occasion, Dr Mullen if they got into trouble but it was not forthcoming.<sup>312</sup> On two of those occasions Dr Naidoo was contacted during normal working hours

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<sup>300</sup> T5454 line 50

<sup>301</sup> T5454 line 50

<sup>302</sup> T5454 line 55

<sup>303</sup> T6628

<sup>304</sup> Exhibit 431pp 50, 51 attachment MMN5 Statement of Naidoo

<sup>305</sup> T6595 line 30

<sup>306</sup> T6628 line 25-30

<sup>307</sup> Exhibit 329 para 28 Statement of Erwin-Jones

<sup>308</sup> T5401 line 10

<sup>309</sup> Exhibit 329 para 31, 32 Statement of Erwin-Jones; T5407 line 50 – 5708 line 10, 5408 line 30

<sup>310</sup> T5406 line 40

<sup>311</sup> T5407 line 40

<sup>312</sup> Exhibit 329 paras 31,32 Statement of Erwin-Jones; T5404

but, without explanation, would not come to assist.<sup>313</sup> On one occasion Dr Naidoo showed up at the end of the operation, after it was completed.<sup>314</sup>

- 4.123 Dr Naidoo certainly did not supervise the Senior Medical Officers to the extent stated in the Area of Need Position Description forms completed by Dr Hanelt for the registration of Dr Krishna<sup>315</sup> and Dr Sharma.<sup>316</sup> In the 2003 and 2004 forms, Dr Hanelt had stated that supervision would be 'by a Staff Specialist 'business hours' and as necessary after-hours'. He also stated that 'Consultant advice and/or assistance is available 24 hours a day seven days a week'. In the form completed by Dr Hanelt for Dr Krishna's initial registration in 2002,<sup>317</sup> it was stated that supervision would be 'Director of Orthopaedics (full time) 2x VMOs' and consultant advice available 'normal working hours and weekday nights. Not all weekends onsite but remote always'; although, in contradiction, the form also stated that the service requirements of the position were 'orthopaedics – provide management of wide range of conditions with minimal supervision'.
- 4.124 After hours there was no direct supervision.<sup>318</sup> When either Dr Krishna or Dr Sharma was on-call, Dr Naidoo was not rostered on-call with them.<sup>319</sup> They were essentially on-call unsupervised.<sup>320</sup> Another Senior Medical Officer Dr Padayachey, who was employed at Maryborough Hospital during the normal hours on duty, but did some on-call work, was also in the same position.<sup>321</sup> Dr Sharma agreed that ideally there should have been a consultant on-call at all times.<sup>322</sup> Both he and patient care would have benefited by a consultant on-call.<sup>323</sup> Nurse Erwin-Jones also said that the absences of Dr Naidoo placed a far too high on-call ratio on the Senior Medical Officers which put an unacceptable risk into the system.<sup>324</sup>
- 4.125 There was evidence of staff concerns about Dr Naidoo's communication style. Dr Hanelt agreed that this would have been particularly acute for the persons who were to be supervised by Dr Naidoo being Drs Krishna and Sharma.<sup>325</sup> Nurse Erwin-Jones said that Dr Naidoo treated Drs Krishna and Sharma rudely. He embarrassed them in front of staff on a regular basis.<sup>326</sup> She

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<sup>313</sup> Exhibit 329 para 56 Statement of Erwin-Jones; T5407 line 50 – 5708 line 10

<sup>314</sup> T5408 line 5

<sup>315</sup> Exhibit 444A attachment TMH 31 Statement of Hanelt; Exhibits 445, 446

<sup>316</sup> Exhibit 361; T5691 line 10 (Dr Sharma)

<sup>317</sup> Exhibit 444A attachment TMH31 Statement of Hanelt

<sup>318</sup> T6720 line 50 (Dr Hanelt)

<sup>319</sup> T5674 line 55 (Dr Sharma); T6527 line 40-50 (Dr Krishna); T5405 line 10 (Ms Erwin – Jones)

<sup>320</sup> T6757 line 20 (Dr Hanelt)

<sup>321</sup> T5678 line 50 (Dr Sharma)

<sup>322</sup> T5683 line 25; Also T5406 line 1 (Ms Erwin-Jones)

<sup>323</sup> T5683 line 30-40 (Dr Sharma)

<sup>324</sup> T5403 line 50 – 5404 line 10

<sup>325</sup> Exhibit 444A attachment THM22 Statement of Hanelt; T6730

<sup>326</sup> Exhibit 329 para 56 Statement of Erwin-Jones

- believed Drs Krishna and Sharma became extremely disillusioned with their treatment by Dr Naidoo.<sup>327</sup> Dr Naidoo also did not get on with Dr Mullen.<sup>328</sup>
- 4.126 Dr Sharma stated he had been able to contact Dr Naidoo if he needed help during business hours when Dr Naidoo was on duty but not after hours when Dr Naidoo was not on-call or away.<sup>329</sup> He agreed that it would have been better if a Senior Medical Officer in the orthopaedics department who did not hold specialist registration always had a specialist on duty.<sup>330</sup> But it did not happen at Hervey Bay.
- 4.127 Dr Hanelt, in evidence, accepted that, at least in retrospect, it was plain that the orthopaedic service which the Hervey Bay Hospital was providing, during the absences of Dr Naidoo and when Dr Naidoo did not supervise the Senior Medical Officers, was inadequate and unsafe.<sup>331</sup>
- 4.128 Although Dr Hanelt denied any pressure upon the Senior Medical Officers to do more complex procedures, he agreed that basically everybody within the hospital was concerned about and shared responsibility of achieving surgical targets.<sup>332</sup> Mr Allsopp also denied that Drs Krishna and Sharma would have been motivated to do more elective surgery for the financial health benefit of the hospital.<sup>333</sup> However, he acknowledged that generally he asked that the resources of the hospital be used and as many patients as can be treated with those resources.<sup>334</sup>
- 4.129 I find that, except in respect of those simple orthopaedic procedures for which Drs Krishna and Sharma did not need supervision, the provision of orthopaedic services at the Hervey Bay Hospital, during Dr Naidoo's periods of absence, was inadequate in terms of patient care and safety.

### **Holding out of Drs Krishna and Sharma as specialists**

- 4.130 Some evidence exists of the District Manager, Mr Allsopp<sup>335</sup> and Dr Naidoo, in his position as Director of Orthopaedic Surgery, holding out or knowing of others on behalf of the hospital holding out Drs Krishna and Sharma as specialists.<sup>336</sup>

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<sup>327</sup> Exhibit 329 para 56 Statement of Erwin-Jones

<sup>328</sup> Exhibit 431 para 7.1 Statement of Naidoo

<sup>329</sup> T5691 line 50. Also Exhibit 357 para 31 Statement of Sharma; T5675, 5691 line 40-50, 5696 line 10

<sup>330</sup> T5682 line 20

<sup>331</sup> T6736 line 50, 6803 line 30

<sup>332</sup> T6742 line 40

<sup>333</sup> T7086 line 55

<sup>334</sup> T7087 line 1

<sup>335</sup> T6747 line 40 – 6748 line 15 (Dr Hanelt)

<sup>336</sup> Dr Hanelt stated that these occurred without his knowledge: Exhibit 444A paras 69, 70 and 76, Statement of Hanelt

- 4.131 In an article published on 18 January 2003 in the local newspaper, the Fraser Coast Chronicle, Mr Allsopp was reported as stating that ‘an orthopedic surgeon had been recruited and another was due to start next month so waiting lists should start to shrink’. He was further reported as stating that ‘the health district plan had recognised the importance of orthopaedics and ophthalmology (eye) and an extra \$300,000 had been channeled to elective surgery to reduce waiting lists’.<sup>337</sup> Mr Allsopp was responsible for the report and acknowledged it to be referring to Drs Krishna and Sharma.<sup>338</sup> Dr Hanelt spoke to Mr Allsopp after the appearance of the article. He explained to him that, to be classed as a specialist or consultant, a medical practitioner had to be registered as such within Queensland and to refer to Drs Krishna and Sharma as specialists was a breach of the relevant Act.<sup>339</sup> Mr Allsopp said that thereafter he made sure that he did not portray them again in that manner.<sup>340</sup> There was no evidence that he contacted the newspaper or did anything else to correct the report.
- 4.132 Dr Krishna’s and Dr Sharma’s names also appeared on the District Orthopaedic and Surgical Consultant On-Call Roster under the ‘District Orthopaedic Consultant’ column. This roster was distributed internally to relevant staff. It also was placed on notice boards within the hospital. Dr Naidoo gave evidence that he had prepared those rosters. He said that he included the names of the Senior Medical Officers under the consultant column by mistake.<sup>341</sup>
- 4.133 I accept that the above were minor and, probably, isolated instances. The Senior Medical Officers identity cards carried the designation Senior Medical Officer. Correspondence from them also was signed as Senior Medical Officer and not as consultant.<sup>342</sup> Nurse Erwin-Jones said that it was clear to her and other staff that a Senior Medical Officer was not a specialist and at no point did Drs Krishna or Sharma hold themselves out as a specialists.<sup>343</sup>
- 4.134 Mr Allsopp acknowledged to the Commission that patients who are being attended to by Senior Medical Officers who are not orthopaedic surgeons should be informed of that fact.<sup>344</sup> That was never done. Implementation of such a protocol would remove ambiguity and also assist in the process of informed consent being obtained from those patients.<sup>345</sup> Subsequent to the North Giblein report, Mr Allsopp said that he considered options to ensure that patients were aware of the status of clinicians they were seeing. However, he

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<sup>337</sup> Exhibit 314

<sup>338</sup> Exhibit 456 para 4.54 Statement of Allsopp; T7079 line 50 (Mr Allsopp); T6747 line 50, 6748 line 15 (Dr Hanelt)

<sup>339</sup> Exhibit 456 para 4.54 Statement of Allsopp; T7080 line 10 (Mr Allsopp); T6747 line 30 (Dr Hanelt)

<sup>340</sup> T7080 line 10

<sup>341</sup> T6630 line 25, Exhibit 431 paras 5.25 – 4.28 Statement of Naidoo

<sup>342</sup> Exhibit 357 para 35 Statement of Sharma

<sup>343</sup> Exhibit 329 para 34 Statement of Erwin-Jones

<sup>344</sup> Exhibit 456 para 4.62 Statement of Allsopp; T7080

<sup>345</sup> T7080 line 35 (Mr Allsopp)

has been absent from the hospital since that time and these have not been implemented.<sup>346</sup>

## Inaction by administration

### Response by Mr Allsopp and Dr Hanelt to lack of supervision

- 4.135 Mr Allsopp and Dr Hanelt were responsible for medical workforce planning, monitoring clinical outcomes and standards and the implementation of policy relevant to clinical services.<sup>347</sup> They knew, or ought to have known, that, by reason of the limited registration and limited experience in Australia of Drs Krishna and Sharma, their lack of credentialing and privileging and the absences of Dr Naidoo, the orthopaedic procedures undertaken by each of them ought to have been closely supervised by a specialist and that, for substantial periods of time, they were not.
- 4.136 Dr Hanelt said that, when he completed the Area of Need Position Description form<sup>348</sup> for the appointment of Dr Sharma which stated that the supervision available would be 'by a Staff Specialist 'business hours' and as necessary after-hours', the supervision he intended during business hours was primarily by Dr Naidoo and after hours by either a local surgeon or remote orthopaedic surgeon contactable by phone.<sup>349</sup> Dr Hanelt said that he thought that remote supervision of after hours services would be sufficient.<sup>350</sup> So far as consultant advice was concerned, although the form did not make this clear, Dr Hanelt said that he intended that no more than remote advice would be available 24 hours a day.<sup>351</sup> Dr Hanelt conceded that, in retrospect, the level of supervision described on the Area of Need Position Description form was inaccurate.<sup>352</sup>
- 4.137 The supervision stated to be available for Dr Krishna in the Area of Need Position Description form completed for him for his 2003 renewal of registration was in the same terms.<sup>353</sup> In later forms completed by Dr Hanelt for the 2004 renewal of registration of each of Dr Krishna and Dr Sharma,<sup>354</sup> there continued to be a similar overstatement of the level of supervision provided to each of them.

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<sup>346</sup> T7080 line 40

<sup>347</sup> T6715 (Dr Hanelt)

<sup>348</sup> Exhibit 361

<sup>349</sup> T6715 line 50 – T6716 line 20

<sup>350</sup> 6716 line 50

<sup>351</sup> T6717 line 30

<sup>352</sup> T6717 line 50 – T6718 line 10

<sup>353</sup> Exhibit 445

<sup>354</sup> Exhibits 362, 446

- 4.138 Both Mr Allsopp and Dr Hanelt allowed Drs Krishna and Sharma to perform orthopaedic procedures and to be rostered on-call without supervision. Drs Krishna and Sharma were on duty when there was no specialist in the district available to supervise them.<sup>355</sup> There was usually a Principal House Officer and a Senior Medical Officer or consultant on-call everyday and because of the shortage of consultants, the Senior Medical Officers and the consultants were rostered separately to share the same responsibilities.<sup>356</sup> Dr Sharma said the Senior Medical Officers in other units at the Hervey Bay Hospital also were placed on consultant rosters and the situation was not peculiar to orthopaedics.<sup>357</sup>
- 4.139 No attempt seems to have been made to arrange adequate alternative supervision or to suspend the provision of orthopaedic services during the absences of Dr Naidoo.
- 4.140 Even if the inappropriateness of Drs Krishna and Sharma practising unsupervised was not obvious to the administrators from their knowledge of the doctor's lack of specialist status, lack of credentialing and privileging and Dr Naidoo's absences, and I think it plainly ought to have been, early concerns raised by Dr Mullen, the Australian Orthopaedic Association and nursing staff ought to have aroused this concern.
- 4.141 Dr Hanelt acknowledged that Dr Mullen had made complaints to him.<sup>358</sup> In particular, he was aware that Dr Mullen thought that the Senior Medical Officers should be supervised more.<sup>359</sup> Dr Mullen's concerns were that the Senior Medical Officers were acting as autonomous surgeons, treating and operating on patients as if they were qualified surgeons without any supervision. Dr Hanelt said that he immediately took action to ensure cessation of the practice of describing the Senior Medical Officers as consultants after he found out about it.<sup>360</sup> But he did not remove them from working unsupervised on the on-call roster. It was not until February 2005 that this occurred.<sup>361</sup> He also did not alter the supervision of the Senior Medical Officers.
- 4.142 Dr Mullen said that he became frustrated with the lack of reaction to what he perceived to be a dangerous situation for patient safety.<sup>362</sup> Dr Naidoo was taking large amounts of leave, often 4 to 6 weeks at a time, leaving the two Senior Medical Officers without any supervision at all.<sup>363</sup> Dr Mullen was

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<sup>355</sup> T6758 line 20

<sup>356</sup> Exhibit 357 para 37 Statement of Sharma

<sup>357</sup> Exhibit 357 para 37 Statement of Sharma

<sup>358</sup> T6799 line 30

<sup>359</sup> T6742 line 50, 6799 line 30

<sup>360</sup> Exhibit 444A para 76(iii) Statement of Hanelt

<sup>361</sup> Exhibit 444A paras 99 attachments 'TH37', 'TH38', 'TH38A-D', Statement of Hanelt

<sup>362</sup> Exhibit 330 para 22 Statement of Mullen

<sup>363</sup> Also T5696 line 40 (Dr Sharma)

constantly being called to deal with problems that he had not been involved in at an early stage.<sup>364</sup> He felt that he had to supervise at a higher level than he should be expected to and that his responsibility as a Visiting Medical Officer was becoming larger.<sup>365</sup> Before Drs Krishna and Sharma arrived, he received phone calls at times from junior staff about patients that they wanted advice on because they could not contact Dr Naidoo.<sup>366</sup> After Drs Krishna and Sharma arrived, he was concerned at the constant lack of supervision of surgical procedures.

- 4.143 By mid 2003, Dr Mullen had been to management several times.<sup>367</sup> He had become so unhappy with inaction by management that he contacted the Australian Orthopaedic Association.<sup>368</sup>
- 4.144 In or about June 2003, Dr Greg Gillett on behalf of the Australian Orthopaedic Association contacted Mr Hanelt and raised concerns in relation to Drs Krishna and Sharma working or being portrayed as specialists and performing services at which they were not competent. Dr Hanelt responded explaining that the range of surgery being performed by these two doctors was restricted to the range that the Director of Orthopaedics had assessed them as competent to perform and that many medical practitioners performed procedures and operations for which they did not hold the 'gold standard' qualifications and these two doctors were considered to be in a similar category of non-specialists with certain procedural and operative skills.<sup>369</sup>
- 4.145 In or about July 2003, Dr Mullen raised with Dr Hanelt his concern that Drs Krishna and Sharma were on the hospital rosters as consultant surgeons indicating that they were working completely unsupervised in the care of patients.<sup>370</sup> Dr Mullen correctly saw this as both misstating their position and allowing them to work unsupervised.<sup>371</sup> They were operating autonomously and rostered on-call to work as orthopaedic surgeons. Dr Mullen saw this as dangerous.<sup>372</sup> According to Dr Mullen, Dr Hanelt did not see this as a problem. Dr Hanelt was comfortable with the position.<sup>373</sup>
- 4.146 Nurse Wyatt, the Nurse Unit Manager in charge of the perioperative unit at the Hervey Bay Hospital from May 1997 until October 2003, said that several times<sup>374</sup> she complained to Mr Allsopp about the absences of Dr Naidoo from

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<sup>364</sup> T5768 line 40 (Dr Mullen)

<sup>365</sup> T5455 line 30 (Dr Mullen)

<sup>366</sup> T5455 line 30 (Dr Mullen)

<sup>367</sup> Exhibit 330 para 28 Statement of Mullen

<sup>368</sup> Exhibit 330 paras 27, 28 Statement of Mullen

<sup>369</sup> Exhibit 400 This record of the conversation is by Dr Hanelt in his letter to the Australian Orthopaedic Association dated 4 November 2003 a copy of which is attached to Exhibit 400 the Statement of Beh

<sup>370</sup> T5456 line 55 (Dr Mullen)

<sup>371</sup> T5456 line 40 – T5459 line15 (Dr Mullen)

<sup>372</sup> T5457 line 15 (Dr Mullen)

<sup>373</sup> Exhibit 330 para 19, 20 Statement of Mullen

<sup>374</sup> T7357 line 15

duty when he should have been on duty and his cancellation of patients for major surgery often on the day of surgery.<sup>375</sup> She could not remember the date of those conversations but she stated that they occurred from the time when Mr Allsopp started at the hospital as District Manager until when she left in October 2003.<sup>376</sup> Mr Allsopp could not recall any conversations with Nurse Wyatt about such matters.<sup>377</sup> Nurse Wyatt said she also raised the issue of cancellations with Dr Naidoo. He usually responded, she said, by saying that the cancellations were for clinical reasons.<sup>378</sup> She said that she also raised the issue of cancellations at monthly meetings of the Surgical Services Committee or, as later re-named, the Surgical Services Management Advisory Committee.<sup>379</sup> These were multidisciplinary meetings attended by nursing staff from theatre and specialist clinics and medical staff from each of the surgical departments. The minutes of those meetings do not record such issue having been raised.<sup>380</sup> However, Dr Hanelt corroborated Nurse Wyatt's evidence in this respect stating that complaints were made about the frequent absences of Dr Naidoo and the effect this had on achieving Hospital orthopaedic elective surgery throughput targets at monthly surgical management advisory group meetings.<sup>381</sup>

- 4.147 Similarly, Nurse Erwin-Jones, who started as the Nurse Unit Manager, Operating Theatres, at the Hervey Bay Hospital from January 2004,<sup>382</sup> said that she spoke to both Mr Allsopp and Dr Hanelt on several occasions between about April 2004 and July 2004<sup>383</sup> about the lack of support and supervision of Drs Krishna and Sharma.<sup>384</sup> She said she understood Dr Hanelt to have agreed that such matters were an issue.<sup>385</sup> She understood that Mr Allsopp and Dr Hanelt were looking at ways to 'manage' Dr Naidoo.<sup>386</sup> She did not put her complaints in writing nor complete any incident report. This was because she said, to her knowledge, no negative outcomes had resulted.<sup>387</sup> She did not feel she had any significant evidence to give to them to say you must act on this.<sup>388</sup>
- 4.148 Mr Allsopp said that the cancellation or rescheduling of cases due to absences of Dr Naidoo and the effect that had on activity targets had been raised with

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<sup>375</sup> T7356 line 20

<sup>376</sup> T7357 line 1, 7360 line 5-20

<sup>377</sup> para 5 Supplementary Statement of Allsopp

<sup>378</sup> T7359 line 45

<sup>379</sup> T7357 line 25, 7363 line 20-30

<sup>380</sup> Exhibit 502

<sup>381</sup> T6746741 line 20-50

<sup>382</sup> T5409 line 10 (Ms Erwin-Jones)

<sup>383</sup> T5409 line 10-40, 5437 line 35-45

<sup>384</sup> Exhibit 329 para 65 Statement of Erwin-Jones; T5408 line 45, 5418 line 50-5419 line 20

<sup>385</sup> T5414 line 10, 5437 line 20

<sup>386</sup> T5408 line 55, 5418 line 50

<sup>387</sup> T5408 line 50, 5414 line 50

<sup>388</sup> T5419 line 5

him by Nurse Erwin-Jones during the early part of 2004<sup>389</sup> He also said that Nurse Erwin-Jones talked about Drs Krishna and Sharma not being supported by Dr Naidoo, which he took to mean the absence of supervision and additional training that they would receive if there was more supervision.<sup>390</sup> Mr Allsopp said that he cared about the issue but did not do anything about it.<sup>391</sup> Remarkably, he said that, if he were to act on what all people talked to him about as a District Manager, 'you [would] cause great confusion and great disharmony'.<sup>392</sup> He said that such incidents, if they compromised patient safety, should have been documented by incident reports and dealt with through formal channels.<sup>393</sup> He was not sure if he passed on to Dr Hanelt what was said to him<sup>394</sup> but said 'if I thought it was a minor issue, I would have passed it on to him'.<sup>395</sup>

- 4.149 The reference to the need for documented incident reports and for complaint by 'formal channels' before he would act is disturbing but unfortunately typical of the tendency of administrators, at Hervey Bay and elsewhere, to place form above substance and to ignore problems, even those that threatened patient safety, until forced to act by some formal process or risk of public exposure.
- 4.150 In an email from Nurse Erwin-Jones to Mr Allsopp and Dr Hanelt dated 17 June 2004<sup>396</sup> reference was made to the Senior Medical Officers not having any respect for Dr Naidoo. In another email from Nurse Winston to Dr Hanelt dated 18 June 2004 reference was made to infighting between Drs Naidoo, Krishna and Sharma.<sup>397</sup> Both these emails were sent a couple of weeks before Drs North and Giblin commenced their investigation. Mr Allsopp said that he expected Dr Hanelt to manage the issues.<sup>398</sup> Dr Hanelt said that he decided to await the outcome of that investigation.<sup>399</sup> No individual direct action was taken.<sup>400</sup> There were other verbal complaints about, at least, the unavailability of Dr Naidoo.<sup>401</sup>
- 4.151 Dr Hanelt acknowledged that there were constant complaints from members of staff about Dr Naidoo's absences over several years quite likely commencing earlier than 2002.<sup>402</sup> Dr Hanelt stated that it was reported to him on occasions that Dr Naidoo was absent when not on leave. On those occasions Dr Hanelt

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<sup>389</sup> T7071 line 20, 7072 line 1

<sup>390</sup> T7088 line 10-40

<sup>391</sup> T7088 line 40

<sup>392</sup> T7088 line 55

<sup>393</sup> T7088 line 50

<sup>394</sup> T7089 line 15

<sup>395</sup> T7089 line 25

<sup>396</sup> Exhibit 444A attachment TMH21 Statement of Hanelt

<sup>397</sup> Exhibit 444A attachment TMH22 Statement of Hanelt

<sup>398</sup> 7072 line 50

<sup>399</sup> T6763-4

<sup>400</sup> T6765 line 30 (Dr Hanelt)

<sup>401</sup> T6761 line 20 (Dr Hanelt)

<sup>402</sup> T6731 line 20-30

attempted to contact Dr Naidoo. There were a couple of occasions when he was unable to contact him.<sup>403</sup> On other occasions, when he was contacted, Dr Naidoo gave reasons for his absences such as that he was held up in traffic on the way back from Brisbane.<sup>404</sup> On others, he was performing what he was supposed to be doing or on legitimate leave.<sup>405</sup> Dr Hanelt said that checks had been made with the Human Resources department in relation to Dr Naidoo's leave on occasions. The reports back were that the leave he had taken was within his entitlement.<sup>406</sup> Dr Hanelt did nothing else about it.

- 4.152 Dr Hanelt acknowledged that over quite a number of years there had also been complaints about cancellation of cases by Dr Naidoo and the general attitude of Dr Naidoo.<sup>407</sup> Dr Hanelt agreed that there were significant problems in Dr Naidoo's relationship with Drs Krishna and Sharma,<sup>408</sup> indeed with the majority of staff.<sup>409</sup> He agreed with the finding of the North Giblin report that dysfunctional aspects of the relationships in the orthopaedic department impacted upon the level of care that the department was able to provide.<sup>410</sup>
- 4.153 Dr Hanelt was aware of cases of unsupervised Senior Medical Officer surgery having complications.<sup>411</sup> He said that there was conflicting advice from Drs Naidoo and Mullen as to whether these complications were due to a competence issue or an adverse outcome suffered irrespective of competence.<sup>412</sup>
- 4.154 Although Dr Hanelt conceded that the long absences of specialist supervision created by Dr Naidoo's leave was unsatisfactory,<sup>413</sup> it did not occur to him that it would be dangerous to let Drs Krishna and Sharma perform all of the operations which were within the Scope of Service document. This is despite the expressed concerns of Dr Mullen whom Mr Allsopp described as having an 'excellent clinical reputation'<sup>414</sup> and Dr Hanelt described as a 'quality orthopaedic surgeon'.<sup>415</sup>
- 4.155 Dr Hanelt said that he accepted the view of Dr Naidoo that the Senior Medical Officers could perform the procedures approved in their Scope of Service documents.<sup>416</sup> In his mind, he said, Dr Naidoo was the more experienced and

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<sup>403</sup> T6731 line 40

<sup>404</sup> T6731 line 45 (Dr Hanelt)

<sup>405</sup> T6801 line 30 (Dr Hanelt); Also Exhibit 444B p4 Supplementary Statement of Hanelt

<sup>406</sup> T6731 line 35 (Dr Hanelt)

<sup>407</sup> T6738 line 50 – 6739 line 10

<sup>408</sup> T6807 line 1

<sup>409</sup> T6807 line 5

<sup>410</sup> T6750 line 40

<sup>411</sup> Exhibit 444A para 88(iii) Statement of Hanelt

<sup>412</sup> Exhibit 444A para 88(iii) Statement of Hanelt; T6751 line 30

<sup>413</sup> T6750 line 50

<sup>414</sup> Exhibit 456 para 4.16 Statement of Allsopp

<sup>415</sup> T6800 line 15

<sup>416</sup> T6728

senior orthopaedic surgeon.<sup>417</sup> He did not doubt Dr Naidoo's integrity. Dr Hanelt said that he tempered Dr Mullen's views with his belief that at times Dr Mullen was prepared to allow these same Senior Medical Officers to perform some of these procedures on patients under his care without supervision.<sup>418</sup>

- 4.156 Mr Allsopp said that he had a discussion with Dr Hanelt about the scope of work of the Senior Medical Officers before the time Dr Naidoo documented their scopes of service.<sup>419</sup> He said that he was told soon after the Senior Medical Officers commenced employment that there was an arrangement in place that set out the work they could do independently and the work where they required supervision.<sup>420</sup> Mr Allsopp also said that he went to Dr Hanelt with regard to the absences of Dr Naidoo.<sup>421</sup> Mr Allsopp's concern related to cancellation of surgery rather than patient safety. Dr Hanelt assured him that the leave was approved within award entitlements and that his sick leave was genuine.<sup>422</sup> Mr Allsopp became aware of the interest shown by the Australian Orthopaedic Association at the end of 2003.<sup>423</sup> He discussed with Dr Hanelt the concerns of Dr Mullen. His understanding was that Dr Mullen had raised concern about holding out Drs Krishna and Sharma as specialists and also that there was a disagreement between Drs Naidoo and Mullen as to supervision requirements.<sup>424</sup> Mr Allsopp said he and Dr Hanelt did not discuss specifics other than in relation to the need for an external review.<sup>425</sup> He said that he did not know and did not ask whether the disagreement affected patient safety.<sup>426</sup> He accepted that maybe he should have asked.<sup>427</sup>
- 4.157 Mr Allsopp's evidence, on these and other respects, was, in my opinion, generally unreliable. He appeared to be too ready to say whatever he thought would cast him in a better light. In particular I do not accept that he enquired or was told about the scope of practice in respect of the Senior Medical Officers until about the time that the Australian Orthopaedic Association was making inquiries.
- 4.158 In view of Dr Hanelt's knowledge of the difference of opinion between Drs Naidoo and Mullen as to the competence of Drs Krishna and Sharma, allowing the Senior Medical Officers to continue to perform all operations approved by Dr Naidoo, most of them unsupervised, and to be placed on-call rosters was a

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<sup>417</sup> T6728

<sup>418</sup> Exhibit 444A para 51(i), TMH 21 Statement of Hanelt

<sup>419</sup> T7074 line 20-40

<sup>420</sup> T7074 line 50 – T7075 line 1, T7083

<sup>421</sup> T7074 line 5

<sup>422</sup> T7074 line 5

<sup>423</sup> T7075 line 10

<sup>424</sup> T7075 line 20-40

<sup>425</sup> T7075 line 50

<sup>426</sup> T7076 line 20

<sup>427</sup> T7076 line 40

grossly inadequate response by him in terms of patient safety having regard to the fact that:

- Dr Naidoo was never in a position to properly assess the level of skill or competence of either Dr Krishna or Dr Sharma;
- they were never credentialed or clinically privileged;
- Dr Naidoo, because of his frequent and long absences, had an interest in letting Drs Krishna and Sharma perform most of the work of the orthopaedic unit unsupervised.

Until the question was resolved one way or the other, the Senior Medical Officer's scope of unsupervised practice should have been narrowly limited in the interests of patient safety.

- 4.159 In or about January 2004, Dr Mullen offered to do on-call work one in two for free to assist the hospital ensure specialist cover after hours.<sup>428</sup> Remarkably, this offer was rejected. It was rejected for three reasons, according to Dr Hanelt. First, there was a concern, it was said, Dr Mullen would not be able to meet a one in two commitment based upon past unavailability.<sup>429</sup> Secondly, it was said, there was a significant financial risk that, because the offer for free service was contrary to award conditions, Dr Mullen might later claim payment.<sup>430</sup> Thirdly, Dr Mullen's offer was conditional on Dr Naidoo also providing a one in two on-call commitment. According to Dr Hanelt, Dr Naidoo was only prepared to do a one in four and not a more frequent commitment.<sup>431</sup>
- 4.160 None of these reasons satisfactorily explain why the offer of Dr Mullen was rejected. Having heard Dr Mullen, I have no reason to doubt the sincerity of the offer or that it would have been honoured. And I do not believe that Dr Hanelt had any reason to doubt that either. There does seem to have been some animosity between them. I can only assume this was the real reason for rejecting the offer. In the circumstances, having regard to the interests of patient safety, the hospital had nothing to lose by accepting the offer.
- 4.161 To provide a safe service, according to Drs North and Giblin, in the North Giblin report, even on-call orthopaedic procedures should be supervised by a specialist. Dr Hanelt disagreed with this. He said that there is an essential distinction, particularly in remote areas, between emergency surgery and elective surgery and that, in the case of elective procedures, it would be negligent to allow persons to perform procedures without supervision unless they were competent and preferably credentialed.<sup>432</sup> But apparently he did not

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<sup>428</sup> T6743 line 1 (Dr Hanelt)

<sup>429</sup> T6743 line 10 (Dr Hanelt)

<sup>430</sup> T6743 line 20-30 (Dr Hanelt)

<sup>431</sup> T6743 line 20 (Dr Hanelt)

<sup>432</sup> T6745 line 25

think that that was necessary for on-call orthopaedic procedures. I prefer the opinion of Drs North and Giblin. To allow Drs Krishna and Sharma to provide on-call orthopaedic services unsupervised, having regard to the matters referred to above, was grossly negligent.

4.162 Even in August 2004, when Drs North and Giblin had visited the hospital and Dr Hanelt was aware that their appointment had been made in part because of concerns about the level of competence of Drs Krishna and Sharma<sup>433</sup> to perform, unsupervised, the work which they were performing, and Dr Hanelt knew that Drs Krishna and Sharma were not privileged, Dr Hanelt, remarkably, was still prepared to permit Drs Krishna and Sharma to perform their work unsupervised. During a four week period of absence by Dr Naidoo, Dr Hanelt forwarded an email to relevant staff leaving Drs Krishna and Sharma with a discretion to do whatever procedures they were happy with, other than joint replacements.<sup>434</sup> Dr Hanelt knew that there was a divergence of views between Drs Naidoo and Mullen as to the competence of the Senior Medical Officers, that Dr Naidoo was never in a position to assess their skills or competence and that they had never been credentialed or privileged; and he must have at least suspected that Dr Naidoo's view might be coloured by his own frequent absences and the consequent impossibility of their supervision.

4.163 It was not sufficient, as Dr Hanelt seems initially to have thought,<sup>435</sup> merely to await the outcome of the investigation by Drs North and Giblin, in the meantime continuing to permit Dr Krishna and Sharma to continue unsupervised. Dr Hanelt conceded that, in retrospect, after reading the evidence given by some of the orthopaedic surgeons before the Commission, there should, at least, have been restrictions placed upon the procedures performed by the Senior Medical Officers whilst there was no direct supervision;<sup>436</sup> and that this could have been achieved by a proper privileging committee<sup>437</sup> including one informally appointed. Plainly that should have occurred to him at the time. I suspect that it did not because, he and Mr Allsopp, were more focused on attaining the elective surgery target than on patient safety.

## Quality assurance

4.164 Two potential forms of clinical audit, utilised in most clinical areas, were available: first, a weekly meeting that reviewed patients managed within the week to make sure that all results had been followed up and to discuss alternative options, how things may have been done differently if outcomes

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<sup>433</sup> T6728 line 10 (Dr Hanelt)

<sup>434</sup> Exhibit 444B attachment C (p72) Statement of Hanelt, T6726

<sup>435</sup> Exhibit 444A para 88(iii) Statement of Hanelt

<sup>436</sup> T6732 line 40

<sup>437</sup> T6732 line 50

were not as desired; secondly, a system whereby outcomes were collated so that longer term trends were determined.<sup>438</sup>

- 4.165 The North Giblin report found, and Dr Hanelt agreed,<sup>439</sup> there was a general inadequacy of quality assurance measures in place in the orthopaedic department. According to Dr Hanelt,<sup>440</sup> the personality and management style of Dr Naidoo affected the openness with which any weekly clinical audits were conducted. Dr Naidoo tended to be rather abrupt in dealing with certain issues.<sup>441</sup> Whilst weekly meetings seemed to have occurred, the longer term review meetings were held quite infrequently.<sup>442</sup> It seems that no one collated the data for these. This meant that there was an absence of a system whereby outcomes were collated so that longer term trends could be determined. Dr Naidoo, as Director of Orthopaedics, should have been responsible for calling and scheduling those meetings.<sup>443</sup>
- 4.166 This has changed during the past year with a data program having been purchased by the hospital and a suitable person having been deployed to provide data entry for medical staff.<sup>444</sup>

## Investigation

### **Patient P449 and Dr Mullen's complaint to the Australian Orthopaedic Association**

- 4.167 Dr Mullen had been particularly prompted to take his concerns outside the administration of the Hervey Bay Hospital after a particular incident which occurred in April 2003<sup>445</sup> involving P449.<sup>446</sup> Dr Mullen was contacted, either by Dr Hanelt or Nurse Wyatt,<sup>447</sup> to attend theatre to assist with P449 who had been involved in a motor bike accident and had received a fractured femur in his right leg. Nurse Wyatt had tried to contact Dr Naidoo who was rostered on-call.<sup>448</sup> Dr Naidoo, as frequently had become the case, was unable to be contacted to assist. The patient was being operated on by Dr Krishna. Dr Sharma was also present and scrubbed for the case but was not the

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<sup>438</sup> T6730 line 1 (Dr Hanelt)

<sup>439</sup> Exhibit 444A para 22 Statement of Hanelt, T6750 line 35

<sup>440</sup> T6732 line 50

<sup>441</sup> T6731 line 5 (Dr Hanelt)

<sup>442</sup> T6730 line 20 (Dr Hanelt)

<sup>443</sup> T5163 line 1 (Dr North)

<sup>444</sup> T6802-3 (Dr Hanelt)

<sup>445</sup> T5818 line 40 (Dr Mullen)

<sup>446</sup> Exhibit 330 para 27 Statement of Mullen

<sup>447</sup> Dr Mullen thought it was Dr Hanelt: Exhibit 330 para 23 Statement of Mullen. Nurse Wyatt stated it was her:

T7358 line 1

<sup>448</sup> T7357 line 40-50 (Ms Wyatt)

surgeon.<sup>449</sup> The patient had been in the operating theatre for some time and had lost a lot of blood.<sup>450</sup> Displacement of part of a significant fracture had occurred at the site of placement of a retrograde femoral nail by Dr Krishna. Dr Mullen thought that the femur had been partly fractured during the procedure by the insertion of a nail.<sup>451</sup> This was disputed by Dr Krishna.<sup>452</sup> It is unnecessary to resolve this difference of opinion.

- 4.168 The operation was plainly a complex one. Dr Mullen thought that it should not have occurred without supervision given its complexity, particularly with use of a newer device which required greater skill to place and the assistance of two persons.<sup>453</sup> Dr Sharma, who was present, expressed concern about the lack of supervision he was getting from Dr Naidoo.<sup>454</sup> The view of Dr Mullen is supported by the fact that, subsequently,<sup>455</sup> when Dr Krishna received his Scope of Service documents from Dr Naidoo, complex femoral shaft fractures requiring retrograde nailing was shown to be a procedure that Dr Krishna could perform only with supervision.<sup>456</sup>
- 4.169 Dr Krishna gave evidence that he did not attempt to contact Dr Naidoo or tell him that this was a procedure that he intended to perform. He said he had done the procedure approximately three times before and thought he was capable of doing it.<sup>457</sup> He was plainly over confident in that opinion. I accept Dr Mullen's opinion that he should have been supervised. But it is also plain from what I have said that, although Dr Naidoo was supposed to be on-call, he would not have been able to be contacted to supervise the operation.
- 4.170 Dr Hanelt remembered that, afterwards, Dr Naidoo discussed the procedure with him. He said that Dr Naidoo told him that the outcome was a well recognised complication and it was not due to poor performance of the procedure.<sup>458</sup> Dr Naidoo was of the opinion that Dr Krishna was competent to perform it.<sup>459</sup> Dr Hanelt said he reviewed the literature and found that there was a well recognised complication rate of about two percent for the procedure.<sup>460</sup> Dr Hanelt did not recall being told at the time that the fracture had already been cracked and only displaced during the procedure.<sup>461</sup> Rather he assumed that the fracture had cracked during the procedure.<sup>462</sup>

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<sup>449</sup> T5698 line 25 (Dr Sharma)

<sup>450</sup> Exhibit 330 para 25 Statement of Mullen

<sup>451</sup> Exhibit 330 para 25 Statement of Mullen

<sup>452</sup> T6483-4

<sup>453</sup> T5767 line 30, 50

<sup>454</sup> Exhibit 330 para 26 Statement of Mullen; T5698 line 40-50 (Dr Sharma)

<sup>455</sup> This case occurred prior to the receipt of the scope of service documents

<sup>456</sup> Exhibit 313 para 2

<sup>457</sup> T6485 line 40

<sup>458</sup> T6753 line 30

<sup>459</sup> T6753 line 40

<sup>460</sup> T6753 line 20, T6754 line 1

<sup>461</sup> T6754 line 20

<sup>462</sup> T6754 line 25

- 4.171 The next working day after this incident,<sup>463</sup> Nurse Wyatt also complained to Mr Allsopp about what had happened. She was concerned about the incident. She felt it was not fair on Drs Krishna and Sharma to be operating on a patient without the support from a consultant.<sup>464</sup> Mr Allsopp asked her whether she was telling him that Drs Krishna and Sharma were incompetent. She said that she felt intimidated.<sup>465</sup> She told Mr Allsopp that she thought that they should not be doing complex surgery unsupervised.<sup>466</sup> According to Nurse Wyatt, Mr Allsopp responded by stating 'What do you want me to do; stop Dr Naidoo and Drs Krishna and Sharma operating and then have no service?'.<sup>467</sup> She said that she was upset<sup>468</sup> and dissatisfied with Mr Allsopp's management of the issue.<sup>469</sup>
- 4.172 Mr Allsopp did not recall such conversation. He stated, to his knowledge, it did not occur.<sup>470</sup> Nurse Wyatt strongly disagreed with the suggestions that it did not happen<sup>471</sup> or that she was confused with other conversations relating to management of operations between the District's two hospitals.<sup>472</sup> I have already said that I found Mr Allsopp's evidence unreliable. I accept that the conversation occurred as related by Nurse Wyatt.
- 4.173 After the P449 incident, Dr Mullen contacted the Queensland President of the Australian Orthopaedic Association, Dr Chris Blenkin, to complain. He complained about local management and the seriousness of the lack of supervision which was being provided to the unqualified Senior Medical Officers.<sup>473</sup>

### Appointment of investigators

- 4.174 In or about late October 2003, after the complaint of Dr Mullen and the earlier contact by Dr Gillett on behalf of the Australian Orthopaedic Association, there was media attention in relation to overseas trained doctors in general and specifically in relation to the two Senior Medical Officers at Hervey Bay. An article appeared in *The Courier-Mail* newspaper in which concerns were publicly expressed by some members of the Australian Orthopaedic Association about the Senior Medical Officer's scope of service and supervision. Dr Hanelt was prompted to write to the Chairman of the Queensland branch of Australian Orthopaedic Association, Dr Blenkin by letter

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<sup>463</sup> T7366 line 10-30

<sup>464</sup> T7358 line 40

<sup>465</sup> T7358 line 15

<sup>466</sup> T7358 line 15

<sup>467</sup> T7358 line 20

<sup>468</sup> T7358 line 25

<sup>469</sup> T7358 line 30

<sup>470</sup> para 6 Supplementary Statement of Allsopp

<sup>471</sup> T7366 line 25

<sup>472</sup> T7368

<sup>473</sup> Exhibit 330 para 27 Statement of Mullen

dated 4 November 2003.<sup>474</sup> He expressed disappointment that the association had not further contacted him if it still had concerns after his earlier telephone conversation with Dr Gillett. In the letter he stated that he wanted to work constructively with the Australian Orthopaedic Association to define some guidelines for the Senior Medical Officers. He stated:

From reading the articles, I believe that the AOA has some genuine concerns in relation to the scope of services provided by these two doctors and the degree of supervision provided.

Previous recruitment attempts have demonstrated that it is not possible to recruit an adequate number of registered Orthopaedic Specialists in the District to provide continuous services. Due to the distances involved in transporting patients to a specialist orthopaedic service, cases such as contaminated compound fractures and injuries with acute vascular compromise would potentially suffer serious adverse outcomes if local services cannot be provided. Thus some degree of compromise is necessary to provide the best service possible with the available resources.

- 4.175 On 9 November 2003, Dr Blenkin decided to write to the Minister for Health, the Honourable Wendy Edmonds, expressing concern with the delivery and quality of orthopaedic care at the Hervey Bay Hospital and the need for an independent review. He suggested that the National President of the Australian Orthopaedic Association be contacted to choose two experienced assessors from outside the state to conduct the assessment.<sup>475</sup>
- 4.176 It was not until on or about 28 May 2004 that Drs North and Giblin were notified of their appointment by the Director-General of Queensland Health, Dr Buckland as investigators under Division 1 Part VI of the *Health Services Act* 1991.<sup>476</sup> Their instrument of appointment was dated 6 May 2004.<sup>477</sup>
- 4.177 The delay in the appointment and notification of Drs North and Giblin of their appointment on or about 28 May 2004, nearly a year after complaints were first raised in mid 2003, was unsatisfactory. Except for the unsatisfactory and unreliable preparation of the scopes of service documents in or about January 2004, the status quo, in the meantime, had continued. Drs Krishna and Sharma continued to operate, almost unsupervised. The delay from late 2003 seems attributable to negotiations between Queensland Health and the Australian Orthopaedic Association relating to an indemnity.<sup>478</sup> When the investigation commenced, the matter of the indemnity still had not been finalised.<sup>479</sup>

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<sup>474</sup> attached to Exhibit 400 Statement of Beh

<sup>475</sup> Exhibit 400 Statement of Beh

<sup>476</sup> Exhibit 400 Statement of Beh

<sup>477</sup> Exhibit 336 para 233

<sup>478</sup> Exhibit 400 paras 6 – 9 Statement of Beh and attachments; T5127 line 30 (Dr North)

<sup>479</sup> Exhibit 400 para 9 Statement of Beh

### Example of administrative interference in Dr Mullen's clinical judgment

- 4.178 An incident occurred on a Saturday in August 2004,<sup>480</sup> sometime after the attendance of Drs North and Giblin on the hospital, when Dr Mullen, who was on-call, attended upon an 87 year old<sup>481</sup> woman. The patient had been admitted the night before with a fractured hip.<sup>482</sup> After examination, Dr Mullen decided that the patient needed to have surgery that day.<sup>483</sup> He said evidence had shown that a much better outcome was likely in terms of reduced morbidity and mortality if surgery was performed within 48 hours.<sup>484</sup> The patient's risks also were increased due to a chronic chest infection and advanced age.<sup>485</sup> Dr Mullen organised for Dr Gerry Meijer, a senior Anaesthetist, to be available and booked the patient in for surgery at 4.30 pm.<sup>486</sup>
- 4.179 At the time, a policy existed at the Hervey Bay Hospital that only permitted emergency surgery be performed on a weekend, although exceptions occurred at times<sup>487</sup> and surgical and theatre staff were available from 10.00am until 6.00pm for surgery.<sup>488</sup>
- 4.180 Nurse Erwin Jones, who was at home at the time and had no direct knowledge of the case, was contacted by the senior theatre nurse and informed that Dr Mullen had wanted to perform the surgery.<sup>489</sup> She said she saw the case as an example of Dr Mullen seeking to abuse access to emergency theatres on weekends<sup>490</sup> and to personally gain from the procedure.<sup>491</sup> To her, it was not a life or limb threatening operation<sup>492</sup> but suited Dr Mullen's convenience to do the case.<sup>493</sup> She believed the fracture was 2 weeks old<sup>494</sup> when, according to Dr Mullen,<sup>495</sup> who had examined the patient and whose qualified specialist medical opinion I prefer, it was not; the patient had fallen in a nursing home on the day of her admission. Nurse Erwin Jones said it also had cost implications to the District.<sup>496</sup> She said that if staff was tied up in that case and other emergencies then backlogged, they would have overtime leading to a lot of cost and fatigue.<sup>497</sup> Dr Mullen's intention to use a more expensive prosthesis

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<sup>480</sup> Exhibit 456 para 4.66 Statement of Allsopp

<sup>481</sup> T5470 line 1 (Dr Mullen)

<sup>482</sup> Exhibit 330 para 37 Statement of Mullen

<sup>483</sup> T5469 line 50

<sup>484</sup> T5469 line 50

<sup>485</sup> Exhibit 330 para 37 Statement of Mullen

<sup>486</sup> Exhibit 330 para 37 Statement of Mullen

<sup>487</sup> Exhibit 456 para 4.66 Statement of Allsopp; T5805 line 30 – 50 (Dr Mullen)

<sup>488</sup> T5805 line 25 (Dr Mullen)

<sup>489</sup> Exhibit 329 para 49 Statement of Erwin Jones

<sup>490</sup> Exhibit 329 para 49 Statement of Erwin Jones

<sup>491</sup> Exhibit 329 para 48 Statement of Erwin Jones

<sup>492</sup> T5417 line 35 (Ms Erwin-Jones)

<sup>493</sup> T5417 line 20 (Ms Erwin-Jones)

<sup>494</sup> T5417 line 20 (Ms Erwin-Jones)

<sup>495</sup> T5470 line 10

<sup>496</sup> T5427 line 25

<sup>497</sup> T5417 line 30, 5428 line 5

than routinely used, she thought, also was an unnecessary cost.<sup>498</sup> She also said she also was aware an anaesthetist had advised that surgery should not be performed because the patient had a chest infection.<sup>499</sup>

- 4.181 Although Nurse Erwin Jones said<sup>500</sup> that she had been unable to contact either Dr Hanelt or Mr Allsopp and had instructed the theatre nurse herself that Dr Mullen was not to do the case and that it be re-booked for the following Monday, Mr Allsopp said<sup>501</sup> he was contacted by her. Mr Allsopp said that, after discussing the case with Nurse Erwin Jones, but without consulting with Dr Mullen, he advised Nurse Erwin Jones that the policy should be applied<sup>502</sup> and that the surgery could not proceed.<sup>503</sup> Dr Mullen was notified of the decision by the theatre nursing staff.<sup>504</sup>
- 4.182 Dr Mullen rang Mr Allsopp to discuss the case.<sup>505</sup> He asked the reason for the cancellation of the case. Dr Mullen said that Mr Allsopp told him senior nursing staff had advised him that the case did not need to proceed as an emergency case because the patient was not unwell and, as it was a semi-elective case, it could be carried out the following week<sup>506</sup> and that he had information that an anaesthetist who had seen the patient would rather the case was done on Monday;<sup>507</sup> Mr Allsopp also asked why Dr Mullen was proposing to use to use the more expensive prosthesis for the case than normally used.<sup>508</sup> Dr Mullen said that Mr Allsopp was aggressive and hostile towards him.<sup>509</sup>
- 4.183 A Senior Medical Officer in anaesthetics, who was not a qualified anaesthetist, had earlier seen the patient. He had expressed a concern about the patient proceeding to surgery because he believed she had a chest infection.<sup>510</sup> Dr Mullen, who had felt that this may not have been the case because of the patient's chronic chest condition, thereafter had conferred with a senior qualified anaesthetist, Dr Meijer. Dr Meijer, who also saw the patient,<sup>511</sup> had not considered the patient to have had a chest infection. He had told Dr Mullen that she could proceed to surgery.<sup>512</sup> Dr Mullen asked Mr Allsopp to contact Dr

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<sup>498</sup> Exhibit 329 para 49 Statement of Erwin Jones, T5416 line 40, 5427 line 40

<sup>499</sup> Exhibit 329 para 49 Statement of Erwin Jones, T5416 line 45

<sup>500</sup> Exhibit 329 para 49 Statement of Erwin Jones

<sup>501</sup> Exhibit 456 para 4.66 Statement of Allsopp

<sup>502</sup> Exhibit 456 para 4.66 Statement of Allsopp

<sup>503</sup> T5805 line 55, 5810 line 20 (Dr Mullen); T7081 (Mr Allsopp)

<sup>504</sup> Exhibit 330 para 38 Statement of Mullen

<sup>505</sup> Exhibit 330 para 38 Statement of Mullen

<sup>506</sup> Exhibit 330 para 38 Statement of Mullen, T5807, 5470 line 40

<sup>507</sup> T5808 line 40 – 60

<sup>508</sup> T 5809 line 25, 5470 line 55

<sup>509</sup> Exhibit 330 para 39 Statement of Mullen

<sup>510</sup> T5469 line 15 (Dr Mullen)

<sup>511</sup> T5469 line 35 (Dr Mullen)

<sup>512</sup> T5469 line 20 – 40, 5808 line 55 (Dr Mullen)

Meijer.<sup>513</sup> He also explained the reasons why the more expensive device was needed.<sup>514</sup>

- 4.184 Mr Allsopp contacted Dr Mijer who advised Mr Allsopp that the patient was suitable for surgery and that he agreed with Dr Mullen's assessment that the clinical outcome for the patient may be compromised if the surgery waited until Monday.<sup>515</sup> On that basis, Mr Allsopp allowed the surgery to proceed,<sup>516</sup> although it had to be re-booked for the following morning.<sup>517</sup>
- 4.185 The fact that Dr Mullen and Dr Mijer, who were the clinicians treating the patient and who were the most qualified to assess the urgency and appropriateness of the surgery, were not consulted before a decision was made to cancel the surgery was extraordinary<sup>518</sup> and grossly misguided. Mr Allsopp said that he did not consult Dr Mullen because he knew that if Dr Mullen had an issue with the decision and wanted to pursue the case he would contact him.<sup>519</sup> In hindsight, he correctly conceded that he should have contacted Dr Mullen.<sup>520</sup> Nurse Erwin Jones said that she did not speak to Dr Mullen because she felt it would just end in an argument between them.<sup>521</sup>
- 4.186 Both Mr Allsopp and Nurse Erwin Jones, plainly, should have asked Dr Mullen, the surgeon concerned, his opinion about the urgency of the case. The fact that they did not manifested an excessive concern for cost savings over patient care and safety and a failure to appreciate that, without clinical expertise or consultation, they should not have interfered in the decision-making of highly qualified medical specialists, thereby compromising patient care and safety. I cannot help but also suspect that Dr Mullen's perception<sup>522</sup> of hostility toward him after his complaint to the Australian Orthopaedic Association was, in truth, a reality.

## Dr Kwon

- 4.187 In January 2005, following the investigation by Drs North and Giblin in July 2004,<sup>523</sup> a locum full time Orthopaedic surgeon, Dr Kwon, was employed by the Fraser Coast Health Service District to assist in the delivery of orthopaedic services at the Hervey Bay and Maryborough Hospitals. During the whole of

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<sup>513</sup> T5809 line 1 (Dr Mullen)

<sup>514</sup> T5809 line 30, 40 – 60 (Dr Mullen)

<sup>515</sup> Exhibit 456 para 4.66 Statement of Allsopp

<sup>516</sup> Exhibit 456 para 4.66 Statement of Allsopp

<sup>517</sup> Exhibit 330 para 39 Statement of Mullen

<sup>518</sup> Dr Mullen said it had never before been in a situation where an administrator had cancelled a case without notifying him: T5470 line 35

<sup>519</sup> T7081 line 20, 7082 line 20

<sup>520</sup> T7081 line 40

<sup>521</sup> T5426 line 30 - 60

<sup>522</sup> of which this was one example cited by Dr Mullen in his Statement: Exhibit 330 para 39

<sup>523</sup> although before the delivery of their North Giblin report Exhibit 38 in May 2005

the time whilst Dr Kwon was employed, Dr Naidoo went on planned leave.<sup>524</sup> Dr Naidoo remained on leave until the cessation of the service in May 2005.

- 4.188 Dr Kwon undertook a huge workload to allow, as best he could, the Hervey Bay Hospital to provide a specialist service. He supervised Dr Krishna and Dr Sharma. That supervision went from 100%, initially, to allowing the Senior Medical Officers to perform certain operations without him being in the operating theatre.<sup>525</sup> Nurse Erwin-Jones said that Dr Kwon's supervision of the Senior Medical Officers was dramatically greater than that existing previously. He was always available.<sup>526</sup> Dr Kwon did an inordinate amount of on-call work to support the Drs Krishna and Sharma.<sup>527</sup> During his four months there, the only times Dr Kwon was not on-call was perhaps one or two weekends<sup>528</sup> and he was available to assist the Senior Medical Officers whenever required.<sup>529</sup> Such a workload was unsustainable in the longer term. No doctor could maintain such a workload.<sup>530</sup> Dr Hanelt agreed that, by this time, he had known it was necessary that Drs Krishna and Sharma be supervised constantly by an orthopaedic surgeon until satisfied as to what operations they could perform.<sup>531</sup>
- 4.189 Dr Kwon also conducted weekly Morbidity and Mortality reviews, instigated new procedures in terms of bed management and infection control and participated in the Operating Theatre Review Committee and the Surgical Services Management Advisory Committee.<sup>532</sup> He introduced better education processes.<sup>533</sup>

## Clinical outcomes

### Other patients referred to by Dr Mullen

- 4.190 A comprehensive review of all patients who suffered adverse outcomes as a result of surgery performed by the Senior Medical Officers was not undertaken by this Commission of Inquiry. Apart from the incidents already mentioned, Dr Mullen also gave evidence of a number of other incidents where there may have been sub-optimal treatment, in consequence of a failure to provide necessary supervision of Drs Krishna and Sharma.

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<sup>524</sup> Exhibit 456 para 4.7 Statement of Allsopp

<sup>525</sup> T6733 line 20, T6760 line 40; T5694 line 50

<sup>526</sup> T5434 line 10 (Ms Erwin-Jones)

<sup>527</sup> T5435 line 35 (Ms Erwin-Jones)

<sup>528</sup> T6733 line 25 (Dr Hanelt)

<sup>529</sup> T5674 line 20-40 (Dr Sharma)

<sup>530</sup> T6733 line 30 (Dr Hanelt); Also T5176.20 (Dr North)

<sup>531</sup> T6733 line 55

<sup>532</sup> Exhibit 456 para 4.7 Statement of Allsopp

<sup>533</sup> T5434 line 30 (Ms Erwin-Jones)

*Patient P435*

- 4.191 This woman suffered a very badly damaged fracture of the tibia, which extended down into the joint surface and a very nasty fracture of the fibula bone, which also was in many pieces. She was operated upon by Dr Krishna on 11 January 2005 after earlier having had her operation cancelled on 5 January 2005.<sup>534</sup> Dr Krishna treated the injury by opening the fracture widely and placing large plates on it. In the opinion of Dr Mullen, given the delay of one week in the operation and the swelling at that time, a different technique ought to have been used not involving the opening of the fracture but using frames or nails to try to achieve the fixation without having to widely open the fracture and expose it to the environment with a consequent risk of infection.<sup>535</sup>
- 4.192 The circumstances were exacerbated by Dr Krishna having initially sought the assistance and advice of Dr Naidoo by telephone and being advised by Dr Naidoo to open the fracture and call him if there was a problem.<sup>536</sup> Dr Krishna said that when he opened up the fracture and found the fibula fracture was more comminuted than expected in the x-ray, he again sought Dr Naidoo's assistance.<sup>537</sup> Dr Naidoo refused to come stating that Dr Krishna, as a Senior Medical Officer, ought to have been able to handle it.<sup>538</sup>
- 4.193 Dr Krishna did not dispute the opinion of Dr Mullen that the use of open internal fixation was inappropriate and that it would have been better to use a different technique to achieve the fixation without having to widely open the fracture and expose it to the environment.<sup>539</sup> But this had been what Dr Naidoo had told him to do. The consequences of the treatment was that this woman, in the opinion of Dr Mullen, developed post operative infection and delayed healing of the fracture requiring her to be transferred to the Limb Re-construction Department at the Royal Brisbane Hospital for further treatment.<sup>540</sup>
- 4.194 The absence of supervision by a qualified orthopaedic surgeon meant that the treatment of this woman at Hervey Bay Hospital was unreasonable. Alternative treatment and/or her earlier transfer ought to have occurred.<sup>541</sup>

*Patient P436*

- 4.195 This man suffered an unstable fractured hip and was operated upon by Dr Krishna on 26 March 2004. The injury was more than the normal injury that

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<sup>534</sup> T5775 line 10 (Dr Mullen)

<sup>535</sup> T5775 line 20

<sup>536</sup> T6492 line 40 (Dr Krishna)

<sup>537</sup> T6492 line 45, 6494 line 25

<sup>538</sup> T6492 line 50

<sup>539</sup> T6492 line 20, 6493 line 40

<sup>540</sup> T5775 line 50 – 5776 line 10

<sup>541</sup> T5776 line 30 (Dr Mullen)

occurs to a person who falls over at home and breaks his hip.<sup>542</sup> He was a heavy man. According to Dr Mullen he suffered a subtrochanteric fracture, which is a fracture at the point where the hip bone meets the thigh bone.<sup>543</sup> Dr Mullen said that this was an area that was very difficult to treat. Often fixation failure occurs.<sup>544</sup> The fracture also was comminuted which meant it had multiple fractures.<sup>545</sup>

- 4.196 Symptoms indicative of problems with healing were not detected in outpatients by Dr Krishna. It was only when Dr Mullen became involved a month after the discharge of the patient from outpatients clinic that significant problems of healing were discovered. Dr Mullen's review of the x-rays indicated that the type of fixation used was very inadequate.<sup>546</sup> There were only four screw holes in the plate to fix the bone to the shaft.<sup>547</sup> Dr Mullen said that, if this type of procedure was to be used, between eight and 12 holes on the femoral shaft were needed to get good strength on the bone.<sup>548</sup> In addition, he said that there were some different techniques available at the time of the operation that were better suited to the situation,<sup>549</sup> such as a very long plate with a different type of screw into the ball of the femur or a big long nail that goes into the canal of the bone.<sup>550</sup>
- 4.197 When seen by Dr Mullen, the patient had a non-united proximal femoral fracture with femoral head osteonecrosis collapse and osteoarthritis<sup>551</sup> The patient subsequently required a 6 hour joint reconstructive surgery that could have been avoided by appropriate earlier supervision.<sup>552</sup> Both the absence of an orthopaedic surgeon to assist Dr Krishna through the procedure and in outpatients may have led to this patient suffering significant problems with his fracture not healing properly.<sup>553</sup>
- 4.198 Dr Krishna disagreed that that the injury was a subtrochanteric fracture saying instead that it was intertrochanteric.<sup>554</sup> He disagreed that the procedure required supervision.<sup>555</sup> He disagreed that it is very difficult to get proper fixation of a fracture at the point where the hip bone meets the thigh bone, despite it being unstable, or that fixation failure often occurred.<sup>556</sup>

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<sup>542</sup> T5777 line 35 (Dr Mullen)

<sup>543</sup> T5777 line 40

<sup>544</sup> T5777 line 40

<sup>545</sup> T5777 line 45 (Dr Mullen)

<sup>546</sup> T5777 line 50 (Dr Mullen)

<sup>547</sup> T5777 line 55

<sup>548</sup> T5777 line 55

<sup>549</sup> T5777 line 60

<sup>550</sup> T5778 line 10

<sup>551</sup> T5778 line 20 (Dr Mullen)

<sup>552</sup> T5778 line 40 (Dr Mullen)

<sup>553</sup> T5779 line 10 (Dr Mullen)

<sup>554</sup> T6496 line 30

<sup>555</sup> T6494

<sup>556</sup> T6494-5

- 4.199 I accept the opinions of Dr Mullen. This is another example of Dr Krishna's over confidence. But the real problem was that supervision was not available as it should have been.

### Review of patients by Dr Crawford

- 4.200 Following the release of the North Giblin report, Queensland Health set up a Patient Liaison Service whereby patients who had been the subject of orthopaedic procedures by the doctors at the Hervey Bay Hospital could have those procedures reviewed if they wished to do so.<sup>557</sup> Dr Scott Crawford, a full time staff orthopaedic surgeon at the Prince Charles Hospital, along with other orthopaedic surgeons, visited the hospital a number of times and reviewed a total of 90 patients.<sup>558</sup>
- 4.201 As a result of those reviews, he found a mixture of outcomes. There were patients with good outcomes including some with better than expected outcomes.<sup>559</sup> There were patients where the outcomes were not satisfactory.<sup>560</sup> Dr Crawford said the sample was too selective to be able to draw any statistical results about Dr Krishna's or Sharma's practice.<sup>561</sup> He did not see enough to assess their level of competence.<sup>562</sup> However, he gave evidence of five patients where treatment had been less than optimal. In the last case relating to P446, the treating surgeon was Dr Naidoo; Dr Krishna in that case played only a relatively minor role.<sup>563</sup>

#### *Patient 442*

- 4.202 P442 was a man operated on by Dr Krishna on 28 January 2004. The patient first presented in outpatients in October 2003, suffering bilateral hammer toes more severe to the left side. X-rays showed osteoarthritis but he apparently was not noted to have had a history of rheumatoid arthritis. On 28 January 2004 he underwent surgery involving excision of the 2<sup>nd</sup> and 4<sup>th</sup> metatarsal heads, excision of the PIP joints to the lesser four toes, extensor tenotomies and K wiring.<sup>564</sup>
- 4.203 The decision of Dr Krishna that surgery was required was a correct one according to Dr Crawford.<sup>565</sup> However, the procedure that he performed was wrong and not a standard procedure for such condition for two reasons. First, the MTP joints were dislocated on x-ray and showed rheumatoid arthritis. The

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<sup>557</sup> Exhibit 404 para 6 Statement of Crawford

<sup>558</sup> Exhibit 404 paras 8,9 Statement of Crawford

<sup>559</sup> Exhibit 404 para 13 Statement of Crawford

<sup>560</sup> Exhibit 404 para 13 Statement of Crawford

<sup>561</sup> 6302 line 30 – 6303 line 1

<sup>562</sup> T6314 line 25-45

<sup>563</sup> T6313 line 1-35

<sup>564</sup> Exhibit 405

<sup>565</sup> Exhibit 405

standard procedure, in such circumstances, should have been to stiffen one row of joints, the PIP joints, in the toes and to excise a second row, the MTP joints, and leave them floppy.<sup>566</sup> The patient was booked in for this surgery.<sup>567</sup> But the operation that occurred stiffened both rows of joints not just one. Dr Crawford was not aware of this as a procedure.<sup>568</sup> The MTP joints should not have been fused. Secondly, only the 2<sup>nd</sup> and 4<sup>th</sup> metatarsal heads were resected.<sup>569</sup> Bone should have been taken from all four lesser toes.<sup>570</sup> This potentially would cause increased pressure on the 3<sup>rd</sup> and 5<sup>th</sup> metatarsal heads. Insufficient bone also was resected.<sup>571</sup>

- 4.204 Dr Crawford said that the procedure is not one that would have occurred if an orthopaedic surgeon had been supervising Dr Krisha.<sup>572</sup> The procedure for hammer toes was one which, according to the scope of practice approved by Dr Naidoo, Dr Krishna was allowed to do without supervision. Dr Crawford said he would have needed to have seen Dr Krishna perform a number of these procedures before certifying him as capable of performing them without supervision.<sup>573</sup> Dr North had had a similar view.<sup>574</sup>
- 4.205 Dr Krishna agreed that he had performed the operation in an inappropriate fashion and that he should have done an incision of the whole four metatarsal heads.<sup>575</sup>
- 4.206 When seen by Dr Crawford on 2 June 2005, the patient had minimal movement in his 2<sup>nd</sup> and 4<sup>th</sup> MTP joints, large callosities under the 2<sup>nd</sup> and 4<sup>th</sup> heads and pain. The patient said that he was a lot worse off then prior to his surgery.<sup>576</sup> Dr Crawford, subsequently, performed corrective surgery on the patient.<sup>577</sup>

### *Patient 443*

- 4.207 This patient was operated on by Dr Sharma. She suffered Dupuytren's disease in her left hand. Her operation on 8 December 2004 was for the release of the disease. Dr Crawford said that the location, on the front of the fingers, is a notoriously bad area for scarring.<sup>578</sup> To avoid scarring and later complications from scarring, incisions of a particular type (known as Brummer incisions) prudently ought to have been performed. The operative notes

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<sup>566</sup> T6298 line 25 (Dr Crawford)

<sup>567</sup> T6298 line 30 (Dr Crawford)

<sup>568</sup> T6298 line 40, 6299 line 20

<sup>569</sup> T6298 line 50-6299 line 10 (Dr Crawford)

<sup>570</sup> T6299 line 10 (Dr Crawford)

<sup>571</sup> Exhibit 405 p2 second last para

<sup>572</sup> T6299 line 20

<sup>573</sup> T6299 line 35

<sup>574</sup> Exhibit 313

<sup>575</sup> T6520 line 30-40

<sup>576</sup> Exhibit 405 para 1

<sup>577</sup> Exhibit 404 para 14 Statement of Crawford

<sup>578</sup> T6304 line 25

recorded these incisions as having purportedly been done.<sup>579</sup> However, from his observation of the scars, Dr Crawford said that they had not been done.<sup>580</sup> They were relatively straight scars. Both had formed keloid scars and this resulted in complications.<sup>581</sup> When seen by Dr Crawford, the patient had suffered contracture of the scar and limitation of extension and flexion as a result of the less extensive incision having been made.<sup>582</sup>

- 4.208 The procedure was within Dr Sharma's scope of service list of unsupervised procedures. Dr Crawford said that it was not the type of surgery that he would have left to be done unsupervised until he was satisfied with a person's competence. In fact, because of its complexity, Dr Crawford stated that he no longer performs it. He refers it to a Hand Surgeon.<sup>583</sup>
- 4.209 Dr Crawford has referred the patient to Dr Rowan, a Hand Surgeon, for future care and corrective surgery.<sup>584</sup>

#### *Patients P444 and P445*

- 4.210 Each of these patients had first MTP joint fusions performed by Dr Krishna unsupervised. Again this was a procedure which, according to the scope of practice approved by Dr Naidoo, Dr Krishna was allowed to do without supervision. Dr Krishna did not ask for supervision for either operation. The results in each operation, as acknowledged by Dr Krishna,<sup>585</sup> were poor and resulted in some functional limitation and subsequent corrective surgery.<sup>586</sup> The selection of the procedure that was done was reasonable. The critical aspect related to the position in which the joint was fused. If it is not quite right, patients will often have ongoing pain or difficulty with walking or with footwear.<sup>587</sup> In each of these cases, the position achieved was not right.<sup>588</sup> Positioning the joint fusion is a matter of clinical judgment.<sup>589</sup>
- 4.211 Dr Mullen said that this procedure should not have been done without supervision.<sup>590</sup> Dr Crawford was less committal saying that it depended upon Dr Krishna's technical abilities and past experience with the particular procedure.<sup>591</sup> Dr Crawford, however, said that in respect of P444, an orthopaedic surgeon, in most cases, would have done the procedure better.<sup>592</sup>

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<sup>579</sup> Exhibit 406 para 2 Dr Crawford's Medical Report to Dr Ogunseye dated 24.6.05

<sup>580</sup> T6304 line 30, 50

<sup>581</sup> Exhibit 406 para 2 Dr Crawford's Medical Report to Dr Ogunseye dated 24.6.05

<sup>582</sup> Exhibit 406 para 2 Dr Crawford's Medical Report to Dr Ogunseye dated 24.6.05

<sup>583</sup> T6305 line 20

<sup>584</sup> Exhibit 406

<sup>585</sup> T6500 and 6499

<sup>586</sup> Exhibits 407 and 408

<sup>587</sup> T6306 (Dr Crawford)

<sup>588</sup> T6306 line 30 (Dr Crawford)

<sup>589</sup> T6317 line 40

<sup>590</sup> T5817 line 50 and circled on Exhibit 365 (B of B)

<sup>591</sup> T6306 line 50 – 6307 line 10

<sup>592</sup> T6306 line 40

He also said that a better result would have been likely if Dr Krishna had been supervised.<sup>593</sup>

- 4.212 Dr Crawford performed corrective surgery on both P444<sup>594</sup> and P445<sup>595</sup> to re-adjust the angle of the joint.

#### *Patient 446*

- 4.213 This patient suffered what Dr Crawford described as a 'very nasty'<sup>596</sup> fracture of the tibial plateau. It was openly reduced and internally fixed on 24 May 2004 by Dr Naidoo, assisted by Dr Krishna.<sup>597</sup> Subsequently, presumably because the fracture was not properly reduced and held, a second operation was performed on 2 June 2004 again by Dr Naidoo and Dr Krishna.<sup>598</sup> Both operations caused Dr Crawford concern.<sup>599</sup>
- 4.214 Dr Crawford said that these fractures were complex fractures that are difficult to treat.<sup>600</sup> It involves a break that extends into the knee joint; the joint surfaces are split apart and some of the bone pushed out.<sup>601</sup> To achieve the best outcome for the patient, the bone needs to be reduced back to the right position and held there.<sup>602</sup> Upon a review of the x-rays, Dr Crawford found that, in the first operation, the screws used were too short to get across the two pieces of bone and hold them together.<sup>603</sup> Dr Crawford also formed the view that the bone had not been reduced and put back together well.<sup>604</sup>
- 4.215 In the second operation, another lot of screws were put in to try and pull the bone back together as the bones were in the wrong place. Dr Crawford said that in his opinion the bones could not be pulled back together with just screws.<sup>605</sup> An experienced orthopaedic surgeon should have recognised this<sup>606</sup> and reopened the wound in order to move the bone back into place.<sup>607</sup>
- 4.216 The patient has suffered an increased significant chance of developing arthritis later in life as a result of the way the procedures were performed.<sup>608</sup>

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<sup>593</sup> T6306 line 50

<sup>594</sup> T6305 line 40

<sup>595</sup> T6307 line 30

<sup>596</sup> T6308 line 30

<sup>597</sup> Exhibit 409

<sup>598</sup> Exhibit 409

<sup>599</sup> T6308 line 50 (Dr Crawford)

<sup>600</sup> T6308 line 30

<sup>601</sup> T6309 line 15

<sup>602</sup> T6309 line 20

<sup>603</sup> T6309 line 30

<sup>604</sup> T6309 line 40

<sup>605</sup> T6310

<sup>606</sup> T6311 line 1

<sup>607</sup> T6311 line 10

<sup>608</sup> T6311 line 20 (Dr Crawford)

- 4.217 Dr Naidoo said that it was a difficult operation.<sup>609</sup> He said, as best as he could see at the time of the operation, the fracture had been reduced back to its correct position.<sup>610</sup> Dr Naidoo accepted that x-rays after the first operation showed that the bone had not been put back into place.<sup>611</sup> Dr Naidoo disagreed the screws used in the first operation were too short or that a proper fixation had not occurred.<sup>612</sup> He also disagreed with Dr Crawford's opinion that the second operation should have involved opening up the wound. He said he did not undertake this more extensive procedure because it would expose the patient to infection.<sup>613</sup>
- 4.218 In all of the above cases, I accept the opinions expressed by Dr Crawford and Dr Mullen generally as I have set them out. They show primarily two problems. The first, a constant and serious problem, was the lack of supervision of two relatively inexperienced surgeons and permission to them to operate, without supervision, in circumstances where they ought to have been supervised. This put at serious risk the safety of orthopaedic patients, both in emergency and in elective surgery and resulted in some harmful consequences. The second was the lack of care and skill shown by Dr Naidoo.

## The North Giblin report and aftermath

### North Giblin report and the cessation of orthopaedic services

- 4.219 The North Giblin report was delivered on 6 May 2005. It revealed serious deficiencies in the functioning of the orthopaedic department; in particular its grossly inadequate clinical staff numbers and concern about Dr Naidoo being unavailable to provide adequate supervision of the Senior Medical Officers when operating.<sup>614</sup> It recommended that the Director-General of Health cease all orthopaedic surgical health care activity within the District and arrange the transfer and referral of all elective and trauma patients to a hospital sufficient in size and complexity to handle such referrals.<sup>615</sup>
- 4.220 On or about the 18 May 2005, Dr Kwon withdrew his services on the basis of the recommendation of the North Giblin report that all orthopaedic services cease.<sup>616</sup> In consequence, the orthopaedic services at the Hervey Bay Hospital ceased.

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<sup>609</sup> T6699 line 45

<sup>610</sup> T6699 line 50

<sup>611</sup> T6700 line 30

<sup>612</sup> T6700 line 15, T6711 line 10

<sup>613</sup> T6700 lines 50 - 60

<sup>614</sup> Exhibit 38 para 22 - 25

<sup>615</sup> Exhibit 38 para 28, 31

<sup>616</sup> Exhibit 336 para 250 Statement of Buckland

## Queensland Health's response to the North Giblin report

- 4.221 As Dr Crawford said<sup>617</sup> it would have been reasonably expected that, immediately Queensland Health became aware of any situation, such as that revealed at Hervey Bay, it would have respond to it appropriately regardless of whether the North Giblin report became public or not. However, that just did not happen. Queensland Health delayed at several stages. Each had the consequence of permitting continuation of a serious risk of harm to patients.
- 4.222 There was some delay in Drs North and Giblin finalising the report. It was finalised in late 2004. This delay, Dr North said, was due to delay in obtaining documentation.<sup>618</sup> Dr North understood some of that documentation had been requested before their arrival through the federal office of the Australian Orthopaedic Association but he said that he could not be certain it was done.<sup>619</sup> The request for documentation to be made available on arrival for their inspection was disputed by Mr Allsopp<sup>620</sup> and Mr Hanelt.<sup>621</sup>
- 4.223 In any event, despite the report having been completed in late 2004,<sup>622</sup> the report was not delivered until 6 May 2005. The reason for this was primarily the concern expressed by the investigators and the Australian Orthopaedic Association about an indemnity.<sup>623</sup> The Australian Orthopaedic Association was concerned that the indemnity did not extend to that organisation, and the investigators were concerned that the indemnity ceased prior to delivery because of the passing of the initial deadline.<sup>624</sup> Dr Buckland did not move immediately to dispel those concerns by openly stating that these indemnities were given. Indeed, the matter rested with the report being completed and not delivered because of the indemnity issue until the Australian Orthopaedic Association raised it again on or about 13 April 2005<sup>625</sup> which was after the circumstances of Dr Patel were revealed in the media<sup>626</sup>. There was then a change in attitude by Queensland Health.<sup>627</sup>
- 4.224 Although I do not suggest that officers of Queensland Health ought to have known of the contents of the report before it was received, given the concerns that led to its commissioning, it was plainly in the interests of patient safety that receipt of the North Giblin report be obtained as soon as possible. It was, at least, careless of Dr Buckland and Queensland Health to permit such a long

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<sup>617</sup> T6295 line 50

<sup>618</sup> Exhibit 38 para 4; T5185 line 40 – T5186

<sup>619</sup> T5185 line 45, 5220 line 1

<sup>620</sup> Exhibit 456 para 4.9 Statement of Allsopp

<sup>621</sup> Exhibit 444A para 29 Statement of Hanelt

<sup>622</sup> T5156 line 1, 5182 line 50 (Dr North)

<sup>623</sup> T5156 line 30

<sup>624</sup> Exhibit 400 paras 15 – 26 Statement of Beh

<sup>625</sup> Exhibit 336 para 239 Statement of Buckland

<sup>626</sup> Exhibit 400 para 20 Statement of Beh

<sup>627</sup> T5181 line 20 (Dr North)

period of time to elapse whilst negotiations continued about matters of indemnity. Dr Buckland said that he had not heard further about the report between about October 2004 and 13 April 2005.<sup>628</sup> He then contacted the Australian Orthopaedic Association and the Legal and Administrative Law Unit to progress the matter.<sup>629</sup>

- 4.225 On the day on which he received the report, 6 May 2005, Dr Buckland wrote to Drs North and Giblin saying that ‘there appears to be no hard evidence to support your recommendations’ and suggesting an urgent meeting so that Drs North and Giblin could explain how they came to their conclusions. This is an extraordinary response to what appeared to be a dangerous situation requiring immediate action. Yet it bears a striking similarity to Dr Buckland’s approach when confronted with the even more serious complaint at Bundaberg; to criticize the critics and to conceal the criticism rather than to deal with the problem. The report was written by two eminent and independent orthopaedic surgeons. Its findings were based upon the interviews of various medical, nursing and administrative staff, and on documentation obtained from the hospital. The mere fact that the findings were not conclusive or, even perhaps only preliminary, did not detract from its integrity or reliability. Its conclusions were so serious as to require immediate action.
- 4.226 Dr Buckland conceded that it was a serious matter to continue a service when two respected doctors had thought that, on the evidence they saw, it should be terminated.<sup>630</sup> He said, however, that he knew Dr Kwon had commenced work at the hospital and thought that answered the criticisms contained in the North Giblin report.<sup>631</sup> But, as Dr Buckland was aware,<sup>632</sup> the locum employment of Dr Kwon did not change the numbers of orthopaedic surgeons at the hospital. Dr Kwon was employed because Dr Naidoo was on leave. As Dr Buckland should have seen from the North Giblin report, Drs North and Giblin had expressed the view that a minimum of four specialists orthopaedic surgeons were required to deliver orthopaedic services of an adequate and safe nature.
- 4.227 Dr Buckland was not the only senior Queensland Health officer to adopt this inadequate response. Dr Scott, then Senior Executive Director Health Services, and Dr FitzGerald, the Chief Health Officer, adopted similarly dismissive and careless views of the findings and recommendations of the North Giblin report. Dr Scott, in a memorandum to Dr Buckland dated 10 May 2005, advised Dr Buckland that he agreed that Drs North and Giblin’s observations seem to be based on advice from a range of parties and not on

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<sup>628</sup> Exhibit 336 paras 238 – 239 Statement of Buckland

<sup>629</sup> Exhibit 336 para 240 Statement of Buckland

<sup>630</sup> T5551 line 45

<sup>631</sup> Exhibit 336 para 242 T5551 line 50; Statement of Buckland

<sup>632</sup> T5552 line 15 – 5553 line 10

clinical material. He said that he thought that the management and doctors at the Fraser Coast Health District ought to be given an opportunity to respond in order to deliver natural justice and that he would make arrangements for the operative skills of the doctors to be assessed though the Skills Development Centre at the Royal Brisbane and Womens Hospital.<sup>633</sup>

- 4.228 Dr FitzGerald, in a memorandum to Dr Buckland dated 12 May 2005, advised that, although the report identified issues of serious concern, it included material which was potentially defamatory and legal advice was necessary prior to any release. In addition, he told Dr Buckland that the investigators had not sought or been in a position to validate any of the concerns and ordinarily such concerns would require a more formalised investigation; the information collected in relation to clinical standards was circumstantial and not validated; the recommendation to cease orthopaedic services would have significant clinical, legal, industrial and community implications; and it would not be wise to take such dramatic action.<sup>634</sup>
- 4.229 Drs North and Giblin did not meet with Dr Buckland as requested. They felt the meeting might compromise their recommendations. Moreover, there was concern that the meeting may not be covered by the indemnity from Queensland Health, which protected them from liability arising from their findings and recommendations in the report only until delivery of the report. Drs North and Giblin thought it was more prudent for officers of the State Orthopaedic Association to meet with the Director-General.<sup>635</sup> Such a meeting subsequently occurred.<sup>636</sup> Despite such meeting, and as was evident in Queensland Health's objection to the making of the report an exhibit in the former Commission of Inquiry, the attitude remained that the North Giblin report was unreliable.
- 4.230 The North Giblin report was produced to the previous Commission upon a summons for its production on 11 May 2005. Queensland Health objected to it becoming an exhibit, submitting that it was highly defamatory, expressed conclusions which were not expressed to be made on the usual evidentiary supports, namely, medical records, and referred to evidence of an unsafe kind, in that it was not evidence within the direct knowledge of the source. There was no substance in any of the objections. I infer that Queensland Health wanted to suppress the report. The report was made an exhibit in the former Commission and made public on 13 May 2005.<sup>637</sup>

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<sup>633</sup> Exhibit 336 attachment SMB75 para 244 Statement of Buckland

<sup>634</sup> Exhibit 336 attachment SMB76 para 244 Statement of Buckland

<sup>635</sup> T5157 (Dr North)

<sup>636</sup> T5158 (Dr North)

<sup>637</sup> By Ruling No 2 made 13 May 2005. It was subsequently marked Exhibit 38, T588

## Inadequate orthopaedic staff numbers

- 4.231 The major problem facing the orthopaedic department at Hervey Bay throughout the relevant period with which my report is concerned was a grossly inadequate number of specialist staff to provide a safe, adequate orthopaedic service. To achieve a safe adequate service, four specialist orthopaedic surgeons were required. Before Dr Mullen arrived at the Hervey Bay Hospital in 2000, Dr Naidoo was the only specialist there. Although Dr Khursandi from the Maryborough Hospital was available for some on-call consultation and service, he usually did not visit the Hervey Bay Hospital.<sup>638</sup> After the appointment of Dr Mullen as a Visiting Medical Officer, the numbers of registered orthopaedic surgeons available rose a little. But Dr Mullen's commitment was only a maximum of two sessions totaling 7 hours per week and a one in four on-call roster and Dr Naidoo was absent from the hospital for substantial periods. From January 2005, Dr Kwon acted as locum in replacement of Dr Naidoo.
- 4.232 Mr Allsopp said that the Senior Medical Officers, Drs Krishna and Sharma were not employed for budget convenience but due to the fact that the hospital was unable to attract additional full time orthopaedic surgeons to the district.<sup>639</sup> But the evidence showed that budgetary concerns and activity targets figured prominently in management strategies generally,<sup>640</sup> as it did at other Queensland public hospitals; in particular, in relation to the employment of the two Senior Medical Officers. The emphasis was on reducing elective surgery waiting lists, not patient safety, as the media statement by Mr Allsopp published in the local news paper on 18 January 2003 relating to the employment of two orthopaedic surgeons showed.<sup>641</sup>
- 4.233 Dr Hanelt said that, when it is not possible to recruit an adequate number of specialists to provide a continuous specialist service, as he said had been the case in the Fraser Coast Health Service District, other models of service must be utilised.<sup>642</sup> He appeared to explain this by saying that, due to the lack of specialists applying for positions, it was necessary to attempt to provide a service with non specialists to manage patients who would potentially have their outcomes adversely affected by treatment delays.<sup>643</sup> But there is no evidence of any attempt having been made to assess what patients would have had their outcomes affected by any treatment delay; or to consider the greater risk of permitting unqualified doctors to perform orthopaedic surgery beyond their level of competence. The kinds of injuries referred to by him in

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<sup>638</sup> Exhibit 431 para 6.1 Statement of Naidoo ; T6734 line 10

<sup>639</sup> Exhibit 456 para 4.56 Statement of Allsopp

<sup>640</sup> See eg Budget Position Summary Exhibit 456 attachment MA14 Statement of Allsopp

<sup>641</sup> Exhibit 314

<sup>642</sup> Exhibit 444A para 32 Statement of Hanelt

<sup>643</sup> Exhibit 444A para 74(i) Statement of Hanelt

his letter to Dr Blenkin, the Queensland President of the Australian Orthopaedic Association, as potentially suffering serious adverse outcomes (namely, contaminated compound fractures and injuries involving acute vascular compromise) were emergency injuries. They were also possibly beyond the competence of the Senior Medical Officers.<sup>644</sup>

- 4.234 The on-call component of the hospital for orthopedic surgeons, from a professional and personal perspective, was impossibly heavy. Dr Hanelt accepted that the on-call roster in the orthopaedic department, indeed in basically every discipline in the Hospital, was too demanding.<sup>645</sup> In the orthopaedic department, it was unsustainable.<sup>646</sup> It burnt out and created overtired staff<sup>647</sup> which increased the risk to patient safety.<sup>648</sup> Although initially reluctant to accept it,<sup>649</sup> Dr Hanelt also eventually conceded, correctly, that a one in two on-call roster is so unsafe as to be unreasonable to allow it to continue.<sup>650</sup>

## Adverse findings and recommendations

### Findings against Dr Naidoo

- 4.235 In view of the doubts raised by Dr Naidoo relating to accuracy of the recording of leave by the Human Resources department, which may upon investigation be justified, I do not make a conclusive finding in this respect but consider there is cause to further investigate whether between August 2002 and February 2005 there were numerous occasions when Dr Naidoo was in Brisbane or otherwise absent from duty when he was not on approved leave and should have been on duty in the Fraser Coast Health Service District.
- 4.236 I find that between July 2003 and August 2004 Dr Naidoo, as Director of Orthopaedics at the Hervey Bay Hospital, authorised Dr Krishna and Dr Sharma to perform, unsupervised, certain orthopaedic procedures which they ought not to have been allowed to perform without supervision by an orthopaedic surgeon. He did this by approving inappropriate scopes of practice and by taking extended leave knowing that was to leave both of the Senior Medical Officers unsupervised.

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<sup>644</sup> Dr Wilson expressed the opinion that he would have excluded surgery vascular work from the elective list of Dr Krishna: see T7335 line 50

<sup>645</sup> T6757 line 45

<sup>646</sup> T6756 line 20 (Dr Hanelt)

<sup>647</sup> T6758 line 10 (Dr Hanelt)

<sup>648</sup> T6758 line 15, 6756 line 30 (Dr Hanelt)

<sup>649</sup> T6756 line 40,

<sup>650</sup> T6758 line 15

4.237 The circumstances were not entirely Dr Naidoo's making. Much, and depending upon further investigations, perhaps all, of his leave absences were approved. Further, as the Area of Need position description for the initial appointment of Drs Krishna<sup>651</sup> showed, the person whom the hospital was seeking to assist Dr Naidoo, at least at that time, was someone who, upon appointment, was capable of 'providing management of a wide range of conditions with minimal supervision'. Dr Hanelt said that Dr Naidoo was aware that what the hospital had been seeking was someone who would be, upon appointment, capable of providing management of a wide range of conditions with minimal supervision.<sup>652</sup> That was plainly not Dr Krishna, at least until some expert assessment of his skill and competence had so certified him. Moreover, as I find below, the situation, which existed and was condoned by the administrators, was one where more specialists than just Dr Naidoo were required to provide an adequate and safe 24 hour orthopaedic service.

### **Recommendations against Dr Naidoo**

4.238 I recommend that the Director-General of Queensland Health conduct an investigation into whether Dr Naidoo has been absent from duty without approved leave and without reasonable excuse, and if so, consider disciplinary action pursuant to s87 of the *Public Service Act* 1996. I also recommend that consideration be given to the taking of such disciplinary action against Dr Naidoo for carelessly and incompetently allowing Drs Krishna and Sharma to perform unsupervised orthopaedic procedures which they ought not to have been allowed to perform without supervision.

### **Drs Krishna and Sharma**

4.239 I do not propose to make any findings against either Dr Krishna or Dr Sharma. Both were frank in acknowledging that they would have preferred more supervision. Dr Krishna stated he had not applied for an appropriate accreditation because of the lack of supervision. Neither of them can be blamed for being reluctant to speak out about their lack of supervision or the over assessment made of their skills. As Dr Sharma hinted, their employment was in the hands of their supervisors.<sup>653</sup> It is true that Dr Krishna was overconfident about what he was capable of doing without supervision. But if he had been assessed by some process, such as credentialing and clinical privileging, and supervised as he also should have been, that would not have been a serious problem. Both now have general registration subject to supervisory conditions.

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<sup>651</sup> Exhibit 444A attachment THM31 Statement of Hanelt

<sup>652</sup> T6760 line 10

<sup>653</sup> T5699 line 5

## Findings against administrators Mr Allsopp and Dr Hanelt

- 4.240 As in the case of the Bundaberg Base Hospital, the shortcomings of these administrators must be viewed in the context of the high priority placed upon budget integrity and throughput by Queensland Health with potential financial penalties upon Districts that do not achieve activity targets.<sup>654</sup> Moreover, I accept that a District Manager who exceeded his budget risked dismissal and that that had occurred.
- 4.241 However, as Dr Hanelt acknowledged,<sup>655</sup> it is the responsibility of administrators to deliver health care, not only in the most efficient manner, but also in the safest manner that is possible within the budget constraints that exist. In Hervey Bay, as in Bundaberg and elsewhere, there was a constant tension between these responsibilities.
- 4.242 But, in the end, the administrators of a public hospital must put patient safety first. The provision of a 24 hour orthopaedic service at Hervey Bay was such a risk to patient safety that no reasonable administrator should have permitted it to continue, as each Mr Allsopp and Dr Hanelt carelessly did. No doubt some limited emergency service should have been provided, in which Drs Krishna and Sharma were substantially limited in the operations they could perform until they were properly assessed. Anything more was plainly beyond the capacity of the medical staff.
- 4.243 Mr Allsopp and Dr Hanelt both carelessly and incompetently failed in their duty to patients by allowing the situation to continue as they did, particularly after problems were brought to their attention by Dr Mullen and nursing staff. Even after the release of the North Giblein report, and initially in statements to this Commission, each of them continued to deny the existence of any patient safety concerns and to protest against the cessation of the orthopaedic service. Only in cross examination was it accepted, at least by Dr Hanelt, that so long as the Senior Medical Officers were not receiving adequate supervision, the services being provided by them were unsafe. This belated response reflects a greater concern by both with maintaining the service and the budget than with patient safety.
- 4.244 The administrators did not, as Mr Allsopp said they did, '[have] to continue to provide the service'.<sup>656</sup> That this was not obvious to them is alarming. If it is the case that a shortage of doctors did not permit a full service to be provided safely, a full service should not have been provided. A service should have been provided only to the extent that it was safe. Patient safety should never have been compromised. I find that, by their actions and inaction, both Mr

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<sup>654</sup> Exhibit 444A para 74(vi) Statement of Hanelt

<sup>655</sup> Exhibit 444A para 74(vi) Statement of Hanelt

<sup>656</sup> T7085 line 15

Allsopp and Dr Hanelt compromised patient safety and that this had harmful consequences at least in the identified cases to which I have referred.

- 4.245 I find that each of Mr Allsopp and Dr Hanelt also carelessly and incompetently failed to implement the Queensland Health policy and local policy on credentialing and clinical privileging, or any alternative process to ensure that the medical practitioners in the Orthopaedic department were credentialed and clinically privileged. This failure resulted in Drs Krishna and Sharma not being properly credentialed or privileged before either commenced in service. Consequently, no limits were properly placed on them in performing orthopaedic procedures or in what they might do when routinely on duty after hours in circumstances where they had inadequate consultant supervision.
- 4.246 The delay of both Mr Allsopp and Dr Hanelt, in having Drs Krishna and Sharma in any way assessed and their scopes of practice reduced to writing until January 2004, was careless and incompetent. Even at that time, Dr Hanelt knew or should have known that the Scopes of Service documents prepared by Dr Naidoo were not sufficiently independent to be relied upon because Dr Naidoo, due to his own frequent absences, was self interested in an over-certification of the competence of the Senior Medical Officers to perform procedures unsupervised.

### **Recommendations against Mr Allsopp and Dr Hanelt**

- 4.247 I recommend that consideration be given to the taking of disciplinary action against each of Mr Allsopp and Dr Hanelt pursuant to s87 *Public Service Act* 1996 for carelessly and incompetently performing their duties.

### **Findings against Queensland Health and Drs Buckland, Scott and FitzGerald**

- 4.248 I find that:
- (a) Dr Buckland and Queensland Health delayed unreasonably in dispelling concerns that Drs North and Giblin, and the Australian Orthopaedic Association, were not indemnified from liability in respect of and of anything arising from the publication of the North Giblin report;
  - (b) Drs Buckland, Scott and FitzGerald and Queensland Health acted unreasonably in failing to close the orthopaedic unit at Hervey Bay Hospital as soon as they received the report; and
  - (c) Drs Buckland and FitzGerald and Queensland Health acted unreasonably in seeking to suppress the report.

I say more about these people in Chapter Six.