Bundaberg Hospital *Commission of Inquiry*

STATEMENT OF DAWID SMALBERGER

Dawid Smalberger makes oath and says as follows:

1. I was born in South Africa. I reside in the Bundaberg district at an address I have provided to the Commission.

2. I graduated in 1985 from the University of Stellenbosch, South Africa, with a MBCHB (which is equivalent to the MBBS offered at the University of Queensland). I then completed a Masters in Internal Medicine at the same institution and registered in 2000 as a specialist at the Health Professions Council in South Africa . I was first registered as a doctor in Queensland in May 2003. At present I have dual registration with the Medical Board of Queensland - under general registration and under special purpose registration (deemed specialist), namely to fill an Area of Need position at Bundaberg Base Hospital as a specialist physician. I have successfully completed the Australian Medical Council examination. I have also completed the Royal Australian College of Physicians' 12 months Peer Review Program and have received permission to sit the Royal Australian College of Physicians examination, for the purpose of obtaining Fellowship.

3. I work in the Department of Medicine at the Bundaberg Base Hospital. I have worked continuously at this Hospital since I was registered in Queensland. I am responsible to Dr Miach, the Director of Medicine, and then, in turn, to Dr Darren Keating, the Director of Medical Services.

4. I have been asked to comment on the treatment provided to a patient who, I understand, has been identified before the Commission as P21. This patient was an elderly man admitted under my care to Bundaberg Base Hospital in December 2004. His complaint was that food was getting stuck when he

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swallowed. An upper gastro-intestinal endoscopy was done and it revealed a large mass at 40cm at the gastro-oesophageal junction with a partial obstruction of the oesophageal lumen. The endoscopy confirmed that the mass was also present below the oesophageal sphincter. A biopsy was taken and the histology showed that the mass was malignant. CT scans of his chest and abdomen were done, to stage the tumour, to aid decision making on the most appropriate further management.

5. At that time, I formed the view that P21 should be transferred to the Royal Brisbane Hospital, and I informed the patient accordingly on the 9th of December 2004. As a practitioner in internal medicine, it is my job to diagnose a problem like this, but then to allow the surgeons to decide on the most appropriate further management. In P21's case, I was firmly of the view that the patient needed to be transferred to Brisbane. I considered that the best further management of the problem was likely to be a combination of the use of a stent (to keep the oesophagus open) and/or radiation and/or chemotherapy.

6. I did not contemplate retaining the patient in Bundaberg, because Bundaberg Base Hospital is essentially a rural regional hospital, with limited resources. I did not think that Bundaberg Base Hospital was the most appropriate location to provide the assessment and treatment that P21 required.

7. My experience from previous dealings with Brisbane hospitals is that, when an internal medicine doctor calls them to request a transfer, then the first question the Brisbane surgeon asks, is whether the local Bundaberg Base Hospital surgeon agrees that a transfer is necessary. For that reason, I arranged for one of my junior doctors to refer P21 to the Department of Surgery at Bundaberg Base, to obtain support for the transfer.

8. I was not further involved in P21's case. It is good practice for a surgeon to discuss a referred case with the physician, with a view to agreeing on the nature of the problem and the most appropriate response. I was not contacted by anyone from the Department of Surgery and I did not know more about P21,

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until I was informed later that Dr Patel had carried out an esophagectomy and the patient had died.

9. In my time at Bundaberg Base Hospital, I had one major incident personally with Dr Patel. In 2003, P51, was admitted under my care, with a heart attack. His haemoglobin was very low, but there was no clear explanation for that. It was important to rule out a significant source of blood loss, as heart attack victims are treated with blood thinners that can encourage further blood loss. He had been in a truck accident during the previous weeks and was struck in the chest by the steering wheel. Clinical examination showed no obvious trauma to his chest and stomach. A chest x-ray showed that there was no blood collection in his chest. I then arranged a CT scan of his abdomen and the patient went to the Department of Radiology. Next, Dr Patel called me unexpectedly and advised that the CT scan showed that the patient's spleen was in two pieces and he has decided to do an urgent splenectomy.

10. I am not sure how Dr Patel became involved in the management of the case, because I certainly did not refer the patient to him. I believe that he must have come across the case, while in the Department of Radiology for another reason. I asked Dr Patel if he was aware that the patient had a heart attack and informed him that it would be a major risk to take the patient to theatre. I arranged to meet immediately with Dr Patel in the Intensive Care Unit. We studied the CT scan films, but I did not see any problem with the spleen. I informed Dr Patel of my opinion, that the patient did not need a splenectomy, but needed to be transferred to Brisbane for a coronary angiogram. I was surprised when an anaesthetist arrived and then realised that Dr Patel had already arranged an anaesthetist for the splenectomy.

11. The patient was primarily admitted under my care and I refused to allow him to go for surgery. Dr Patel did not take the refusal well, perhaps because it came from a more junior person. He became angry and raised his voice. We were at the foot of the patient's bed, with nursing staff nearby, when Dr Patel said that my opinion was the most stupid thing he has ever heard.

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12. I did not discuss the case further with Dr Patel and arranged the patient transfer to Brisbane. The transfer occurred and the medical staff in Brisbane subsequently confirmed that there was nothing wrong with the spleen. The patient had a coronary angiogram, that showed a severe stenosis of one of his coronary arteries, which was opened with the insertion of a stent.

13. I am not a vindictive person and have never made a formal complaint against another doctor in my career. However, I was sufficiently alarmed by the incident with Dr Patel that I decided to make a formal complaint. I was concerned both by Dr Patel's displayed clinical competence and his unprofessional conduct. I reported the incident to Dr Keating in his office and asked him the procedure for laying a complaint. Dr Keating, in response, listened and said that he would take it up with Dr Patel. He didn't actually tell me the procedure for laying a formal complaint.

14. Dr Miach subsequently raised the issue with me. He told me that he had spoken with Dr Keating and with Dr Patel. I reported the incident and my concerns to Dr Miach in detail. He advised that Dr Patel had given a different version of the events that occurred. Dr Miach then studied the medical record of the patient and the CT scan films. After a few days he came back to me. He said that in his opinion my diagnosis and management were correct. Dr Keating never reported back to me after our discussion in his office.

15. The contents of this statement are true and correct to the best of my knowledge.

Sworn on 23/6/05

at Bundaberg in the presence of:

.... B. Aslett JP (C. Dec)

Deponent

~~Solicitor~~/Justice of the Peace
(Commissioner of Dec)

Library:BHCI
Document Name:smallberger_statement.DOC
Document #: 663 Version:v1
Author_Id: AZSCOT