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Transcript of Proceedings

THE HONOURABLE G DAVIES AO, Commissioner

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IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 2) 2005

QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY

BRISBANE

..DATE 13/10/2005

..DAY 24

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THE COMMISSION RESUMED AT 9.02 A.M.

DARREN WILLIAM KEATING, CONTINUING CROSS-EXAMINATION:

COMMISSIONER: Yes, Mr Allen?

MR ALLEN: Dr Keating, at pages 28 and following you deal with the steps you took in relation to the death of a pateint, Mr Bramich?-- Yes.

Could I ask you to go to paragraph 150 of the statement. You refer there to Exhibit DWK47?-- Yes.

Were those notes made at the time of the investigation?-- Yes, they were.

And were they meant to form some type of official record of your investigation?-- They were to show a summary of the information that I was able to glean from the records, plus the reading of other pieces of paper that had been provided to me at that time until I finished - stopped the investigation.

And in relation to opinions expressed, were they your opinions?-- Yes, they were.

All right. If you go to page 96 of the annexures, which is the second page of DWK47, you will see there's a section, "Problems"?-- Yes.

And about four lines from the bottom from the page there is this note, "TH"?-- Yes.

That's Toni Hoffman?-- Yes.

"Left at", question mark, "16.30 hours"?-- Yes.

"Therefore, all her statement is anecdotal only"?-- Yes.

So that would have meant that you would have placed less weight upon her statement because all of it was anecdotal only?-- No. Oh, well, it's certainly - I was talking about the part after 16.30. I was unsure exactly what time she left and that was one of the questions I had to - was to follow-up with her. I think since I learned from the Commission it was later when she left. But it was unclear exactly when she left and, therefore, which part was related to her pure observations and which part was related to happenings which had been passed on to her.

Because, indeed, I suggest that she didn't leave until about 1940 hours that night?-- As I just - as I just said, Mr Allen, I understand that's what I have heard from the Commission.

She was the only person who was continuously in the Intensive Care Unit and near the patient throughout the relevant period?-- I think you will - I think you will find there was a number of nurses associated with the care of Mr Bramich.

That's so?-- And-----

But she was the nurse in charge and keeping an overall view of the picture?-- Until the time she left.

Until 19.40 hours, yes?-- Yes, and unfortunately Mr Bramich passed away some time after that.

Did you dismiss the contents of her statement on the basis that you had a misunderstanding that she'd left at 1630 hours?-- No, I did not dismiss - did not dismiss it. I was trying to establish facts or observations as opposed to what had been said to other people or said by other people to her, and it was the same for - I think you will find I realised later on - same for Dr Carter as well.

You say in paragraph 153 of your statement that you were directed by Peter Leck after receiving Toni Hoffman's letter of the 22nd of October 2004 not to take any further action in respect of your review of Mr Bramich's management?-- That's correct.

How soon after the 22nd of October 2004 did you have that conversation?-- A number of days after that. I can't exactly remember when, but a number of days after that.

Was it in your office or Mr Leck's office?-- I think it was in his ofice, but I - you know, I can't be 100 per cent certain.

What do you say he said which formed such a direction as you described?-- That he'd received the - you know, he'd received this complaint from Toni Hoffman which included a number of patient - patient - concerns about patient care, which included Mr Bramich. He asked me where I was up to. I explained what I'd done, and he said that he in - in view of the fact there was to be an external view, that this - and that Mr Bramich had been named in this complaint, that should be part of that external review, and then he said I should go no further.

He said those words, "You should go no further"?-- Words to the - around that - words around that. I can't exactly remember the exact records, but yes, that was it, the intent.

Did he tell you that you were not to investigate further matters in relation to Mr Bramich but you were to investigate matters otherwise outlined in Ms Hoffman's complaint?-- No, it was - no. I was not to investigate any of those matters. He asked me to arrange appointments with the doctors.

That was for the purpose of investigating the matters raised

in the letter, wasn't it?-- To try and find some corroboration.

Yes?-- But I was - as I said previously, he was - he'd taken control of the complaint and wished to manage it and this situation - I was doing as I was asked and directed. At the end of the day he was the District Manager and he was in charge of the health service district.

And you're sure that he told you that apart from speaking to those doctors, you were to take no further steps in relation to investigating the matters the subject of Toni Hoffman's letter?-- That's correct.

In relation to the matter of the peritoneal catheter placement statistics, you don't accept that Dr Miach gave you the document which is Exhibit 18 in these proceedings at a time in the first half of 2004?-- No, I did not.

And you disagree with his evidence that, indeed, when he spoke to you again on such subject in October 2004 he referred to the document he supplied you earlier in the year and you pretended not to understand what he was saying?-- As I said in my statement, Mr Allen, when I spoke to Dr Miach I did not have any recollection of receiving anything and at that time we did have a heated discussion about that. I, therefore, asked him for a copy of those records, which he then produced the next day. It was only when reviewing files in response to this Commission that I found that I received something which was similar but different from what he gave me in October, and, yes, you know, therefore I'd received that, I think on the 15th of June, but I had not received anything before that time from him.

See, you claim that this document you received on the 15th of June 2004 was in the form that is now Exhibit 69, a form which contains less detail than the document which is Exhibit 18?-- That is correct.

And you say that you only received Exhibit 18 in October 2004?-- That's right.

I suggest to you that you'd actually received the completed document, that is Exhibit 18, at the time earlier than October 2004?-- I do not accept that.

Now, at least by the time you received that, on your evidence in October 2004, you must have immediately realised the significance of the contents of that document, Exhibit 18?-- I'd received - I received that. I think I - and I made some notes. I was unclear exactly if this was related to all - Dr Patel, all of the catheters, what was the comparison, and I was also aware that by that stage we had instituted or were instituting the Baxter program as well. But, yes, I did - I was - I received it, yes.

It was a document which showed in relation to six patients complications following upon placements of such catheters by

Dr Patel including at least one death as a consequence?-- Yes, it did.

All right. You would have no doubt taken into account that information in deciding whether to suspend him at that time in light of the matters raised by Toni Hoffman?-- As I said previously, it was not my decision to suspend him. I didn't have the authority to suspend him. I did speak to Dr Patel about problems and he claimed it was related to a different form of catheter. By this stage we had instituted the program. I was also aware that general - surgeons who undertake this procedure do require training. It may have been a deficiency in his training in previous times. I was not - did not see this as a major - as a major area of incompetence on his behalf.

You made a note at the time on the document, "Poor quality data"?-- Yes, I did.

And you subsequently communicated that view in relation to the data received from Dr Miach to Mr Leck, wasn't it?-- Yes, it was.

You put it in writing that it was merely poor quality data?-- I wrote that down. That was my thoughts at that time and when I spoke to - Mr Leck spoke to me about it. That's what my thoughts - I expressed those thoughts to him.

One of the concerns you had was that you were uncertain as to whether that document showed all of the catheter placements that had been conducted by Dr Patel, so, therefore, uncertain as to whether it showed a 100 per cent complication rate on the part of Dr Patel?-- Yes.

You had that uncertainty at the time you read the document, first read the document?-- Yes.

That's why you wrote, "Poor quality data"?-- Yes.

Why didn't you pick up the phone and ask Dr Miach whether that showed the sum total of all catheter placements by Dr Patel or not?-- Because by this time we'd already gone down the line of instituting a - another program and, as I said, I'd spoken to Dr Patel who acknowledged he had some problems and that we had another program lined up.

Questions had been raised as to Dr Patel's clinical compdetence to an extremely heightened extent by the time of the 22nd of October 2004 to the extent that the District Manager had decided that there would have to be some type of investigation of the matters raised by Ms Hoffman; that's correct?-- I believe that that letter from Ms Hoffman was what caused Mr Leck to begin a - a review of the concerns raised.

Those matters related to Dr Patel's surgical competence?-- They related - yes, they related to issues that had been raised about his competence, yes.

You were given information by a doctor showing at least six patients who suffered serious complications following surgical - well, following placements of catheters by Dr Patel?-- I received a piece of paper which had six patients on it who had some complications related to peritoneal catheter placements. I was aware you could get complications related to those catheter placements.

So as to consider whether that fact forthcoming from Dr Miach was significant in relation to what it might say about Dr Patel's surgical competence, you merely had to ask Dr Miach a couple of questions about?-- Dr Miach provided that data to me. He was talking purely about peritoneal catheters. He did not suggest to me in any way that Dr Miach - correction, that Dr Patel was incompetent.

Did you ask him what the significance of the information was that he was bringing to you?-- He handed it to me, he said, "Here you go.", and left.

Did you after reading it pick up the phone and say, "Look, doctor, how many Tenckhoff catheters were actually placed by Dr Patel before he stopped?"?-- As I said previously, I didn't - didn't ask Dr Miach that.

Did you ask Dr Miach, "What is the normal or expected complication rate for the placement of these catheters?"?-- No, I didn't.

"What does this information you have given me tell me about Dr Patel's competence in this procedure?" You didn't ask him that?-- No, because it had come up in a previous conversation the day before where he said he claimed to have given it to me in relation - we had an exchange about a number of issues and he said he'd given it to me, because we were talking about the Baxter program and what he'd done, and I asked - I said I could not remember it and he provided a copy to me thereafter.

Yes?-- And certainly in that discussion he did not say to me - in this discussion, it was a two-way discussion, it did not - I did not receive any information to suggest that Dr Miach was saying that Dr Patel was incompetent.

COMMISSIONER: But nor did you ask?-- I can't remember the exact words, Commissioner, but I - you know, I think we were talking about this information. I don't - I can - you know, I work - something came up about it. I don't remember the exact words Commissioner.

But you didn't say, "Did this show incompetence on the part of Dr Patel?"?-- Commissioner, I can't recollect if I asked that or not.

Well, you'd certainly remember it if you'd had because he would have said, "Yes.", wouldn't he?-- Yes, but I also said that he didn't say to me, "This shows gross incompetence."

No, no, I understand that.

MR ALLEN: And this was to the context where as early as February 2004 Mr Martin on behalf of the Renal Unit nurses had approached you and told you about complications suffered by patients following upon placements of these catheters by Dr Patel?-- I was told that there were some concerns raised by the nurses and that I needed some more data on which to go.

And you expressed that in the terms of, "If they want to play with the big boys, bring it on."?-- Yes, I did say those words to Mr Martin.

You refer in relation to the possible significance of the information given to you by Dr Miach in paragraph 213 of your statement to some statistics obtained from someone at the DQDSU?-- Yes.

The information that had been given to you by Dr Miach was in relation to the 2003 calendar year?-- Yes, it was.

And it dealt with placements of catheters, I'd suggest, from July - excuse me, from August to December 2003?-- I'd have to look at the piece of paper.

Well, accept that for the moment. It speaks for itself. But the material that you annexed to your statement, they're dealing with placements of catheters in the respective financial years, aren't they?-- Yes, they are.

From July 2003 onwards?-- Yes, they are.

Which encompasses a period after which Dr Petal had stopped inserting catheters?-- Yes.

But even so, the information which you showed shows only eight patients receiving catheters in that period. Eight patients?-- Mmm-hmm. Yes.

You could have obtained that information - did that tell you, then, the information obtained in June 2004, that there was a very small base of clients or patients who would have received such catheter placements?-- Yes, it did at that time, yes.

So that should have then informed you what significance you should have placed upon the information from Dr Miach which was dealing with six patients?-- I can't - I can't recollect putting the two pieces of paper together. Obviously I do not join them up at that time.

Because what that would suggest is that complications in relation to six patients, even on the basis of the figures you'd obtained for a wider period, suggest something close to 100 per cent complication rate for patients?-- The first - the first - the financial year data was related to the number of patients, the number of places. It wasn't focused on the number of complications. I think we would have had to ask for a seperate report to accurately prepare that with what was

produced in October.

The fact of the matter is you really didn't take any appropriate steps to look into the significance of the information provided by Mr Martin or by Dr Miach?-- Mr Martin informed me of the nurse's concerns and I asked for some more information. I didn't receive any after that.

You just closed your ears to it?-- I asked for further information. I believe I closed my ears to it. I know obviously he's referred - fed back what I have said, unfortunately.

Did you speak to Mr Leck about the information you'd received in relation to complications following Dr Patel's placement of Tenckhoff catheters?-- As I said previously, I think Mr Leck spoke to me about that.

Do you recall what time - part of the year that was?-- Unfortunately I don't have a recollection of that, but I think it was some time after the complaint from Toni Hoffman was received.

Could it have actually been earlier in the year?-- As I said, I believe that it occurred after that because I seem to remember it was related to this - this - the upcoming investigation or review.

See, I suggest that Mr Leck actually saw the document, which is Exhibit 18, so the more comprehensive document, some time in the first half of 2004?-- I can't - I don't know what Mr Leck received. All I know-----

And at that time he took the document to you to discuss it?-- As I said, I have a recollection of him discussing it with me and I received my copy in October, I think it was the 22nd of October, and I remember him talking - we were talking about that after that time.

Did you tell Dr - sorry, Mr Leck that you did not think there was any cause for concern?-- I don't recollect saying that.

That renal patients often have significant comorbidities and that some complications are ineveitable?-- I may have said something along those lines.

Did you reassure him that you were aware of the circumstances associated with this patients named in this document and that you were not concerned?-- I was - I didn't say that, no.

You deny saying that?-- Yes, I do.

I should also suggest to you that when he brought the document to you to discuss it, you indicated to Mr Leck that you'd already seen such a document?-- I received my copy on the 22nd of October, so, yes, it therefore had to occur after that time for me to be able to compare that subject, yes.

I suggest that this was months before the 22 October letter from Toni Hoffman?-- I do not accept that.

Just on that topic or a related topic, could I ask you to look at the first page of this document, TH10, please. Now, you would have seen this document before, but just to be clear, I'm suggesting that the relevant part of the document for this question is the part starting, "ICU issues with ventilated patients", and then continuing down to the other written arrow. If we could scroll down a little bit. You see where the arrow ends?-- Yes.

All right. If evidence is that it's only that part of the document which was supplied to Mr Leck in February 2004 - you understand that?-- Yes.

Mr Leck showed you the document which he'd received in February 2004, didn't he?-- I have no recollection of ever seeing that or receiving that from Mr Leck.

In March 2004 I suggest that Mr Leck gave you a verbal summary of the letter and also showed it to you?-- As I said, Mr Allen, I have no recollection of ever seeing it and I have no recollection of him discussing it with me.

You don't recall him saying that Ms Hoffman had brought these matters to him but had also indicated she did not want them formally pursued at that time?-- I have no recollection of that, Mr Allen.

What do you say to the suggestion that you told Mr Leck at that time that in your opinion the problem was entirely related to a personality conflict?-- I - we had a number of discussions - I had a number of discussions with Mr Leck about different aspects of the hospital, including the ICU. As I said previously, yes, I acknowledge that I - over times I have said that there are interpersonal conflict or personality differences in the ICU.

Did you at any time tell Mr Leck that matters being raised by Toni Hoffman were entirely related to a personality conflict?-- I have no recollection of saying that to him.

Did you hold that opinion some time?-- No, I did not hold that opinion where it was entirely related to a personality conflict.

Paragraph 290 of your statement, you may wish to clarify or alter. Do you see there that it refers to the - after you'd received knowledge that Mr Kemps had died?-- Yes.

In late December 2004?-- Yes.

You say that you "checked to see how may oesophagectomies had been performed by Dr Patel"?-- Yes.

"I found out that he had carried out four"?-- Yes.

"Including Mr Kemps"?-- Yes.

"Two of whom had survived"?-- Yes.

Is that true?-- Yes.

I thought your evidence was it wasn't - it was only after the Commission of Inquiry had started that you became aware of P16?-- No-----

Who was the third oesophagectomy patient who had an oesophagectomy in December 2003 and survived?-- No, when Mr Kemps - when I was - initially information was brought to me about Mr Kemps, I initially thought that only three had been done, I then did some further investigation and then I thought three and in fact we had two die out of three was quite significant. I then did some further investigation and found out there was another patient, I was not aware of his name, unfortunately, I had a unit registration number, there was four.

So then you thought well, two out of four is all right?-- No, I didn't, because I then, then took the decision to make sure that Dr Patel did no more oesophagectomies.

Okay. But the state of your knowledge prior to Mr Kemps' death as you understood it there'd only been two?-- That's correct.

One patient had died?-- Yes.

And one had had serious complications?-- Yes.

And in relation to Mr Kemps, did you understand that you were being approached by Dr Carter and Dr Berens for your advice on whether it should be reported to the Coroner?-- They did seek some information from me, yes, and I explained - I gave them some information and the matter was discussed with them. I certainly put forward the information that had been provided to me about the patient.

Because the medical superintendent does have a very public and an official role in relation to correspondence with lawyers seeking information, with the police seeking information about patients?-- Certainly as regards routine - what we call routine legal matters and routine police matters, they - the majority were handled by Dr Nydam when he took on the role of Assistant Director of Medical Services. For the major medicolegal cases, I handled those ones, he handled the more routine requests from lawyers and police.

So you would have felt that you were in a position where you should advise Dr Carter and Dr Berens as to whether that was a

reportable death?-- And I did provide the advice to them that if they wish to go ahead and report it, they should feel free to do that.

That's no advice at all, that's just saying, "It's in your lap."?-- I believe that was advice.

"You make up your own mind"?-- I treat them as professional medical - medical professionals with the information they had and I advised that if they wished to go ahead, they should go ahead and do it.

They weren't coming to you for permission, they were coming to you for advice?-- And I provided them advice.

By asking you for permission?-- As I said, I gave them advice.

Did you turn your mind to the Coroner's Act?-- Yes, we did look at the new Coroner's Act, yes.

Did you give them your opinion as to where this fell within a reportable death?-- Yes, we spoke about the information that had been provided, yes.

It clearly was a reportable death, wasn't it? You would have expressed that opinion?-- I said that there was - I did not believe it was 100 per cent clear at that time but they obviously had more information in relation to the care of the patient, if they did bring forward that information, they had every right to do that and my understanding that the treating clinicians are best placed to bring information to the Coroner.

You knew that a death was a reportable death if, inter alia, if the death was reasonably expected to be the outcome of a health procedure; you knew that, didn't you?-- I knew that, yes.

All right. This was an elective operation?-- Yes, it was.

I take it that neither the patient nor the surgeon had a reasonable expectation that the patient was going to die?-- I can't - I can't - one would presume so.

So it was obvious, wasn't it?-- I do not believe so, based on the information that was provided to me by the surgeon that the patient had had a previous history of abdominal aortic aneurism repaired and he found evidence of what was believed to be thoracic aortic aneurism, therefore, it was pathology which was - which led unfortunately in this situation the patient had bled from that aneurism. I was unaware, but I've since heard that in fact Dr Patel went through the chest, he'd previously told me that he did not open the chest up to do this procedure.

Did you have the view that this patient's death was the reasonably expected outcome of the procedure?-- I believe

that it was related to the pathology that had been found at the time.

COMMISSIONER: It couldn't possibly have been a reasonably expected outcome of the procedure, could it?-- Not from the procedure itself, Commissioner, but unfortunately because-----

That's what the section says, doesn't it?-- From the previous procedure, as I said, I was told that Dr Patel did not - there was two procedures or two approaches to this procedure and one involves opening the chest up and I was - and he'd previously told me that he did not do that procedure, so therefore I didn't believe that if he opened up the chest, yes, if he'd opened up where did open up the chest and bled from the chest, that would be more likely related to the procedure, but because he had other pathology and that pathology can at any time bleed and cause problems and an aneurism can at any time bleed and cause problems, I was in the situation whereby the patient had an aneurism and had died from that aneurism.

Thank you.

MR ALLEN: So you took the view that perhaps it was merely a coincidence that the patient had the aneurism at that time and was also undergoing surgery?-- Yes.

Oh, I see. So even if the patient had been at home, they may have had that aneurism so therefore it didn't have to be reported to the Coroner?-- That's the information I provided to Dr Carter and Dr Berens, yes.

I see. You refer to some statistics at paragraph 388 of your statement.

COMMISSIONER: Sorry, what paragraph did you say?

MR ALLEN: 388, Commissioner?-- Yes.

And just over the page to page 81 you refer to an Exhibit DWK 88?-- Yes, I do.

And that's a summary sheet of comparison sheets for various indicators?-- Yes.

But the relevant ones in relation to surgery, there's only five surgical clinical indicators?-- Yes.

And only one of those is actually relevant to Dr Patel, isn't it?-- Of the five surgical indicators I'd have to look at them, probably one of them is but there's also a number of others in their general clinical indicators such as return to theatre, unplanned re-admissions to ICU and overall re-admission rates, so they were kind of hospital-wide ones. There were five, I think they were collected for the surgical clinical indicators.

But no, the paragraph in your statement does refer to five surgical indicators?-- And that's right, there are five that

are purely related to the surgery but there are also other general, overall 63, the number is 63 clinical indicators, there are others that are hospital-wide ones which also can reflect patterns.

In relation to the surgical indicators, the only one of relevance to general surgery is indicator 7.1 which refers to a certain specified complication following a lap choly?-- Yeah, general surgery, yes.

Yes. Because the other ones relate to neurology, orthopaedics and vascular surgery?-- That's correct, yes.

Okay. So it would only give limited information in relation to complications following upon Dr Patel's surgical practice?-- Anyone who is performing that procedure which would include Dr Patel.

Yes?-- Yes, I also said there are other indicators which also can reflect that as well.

Do you feel that the processes that were in place at Bundaberg Hospital during the relevant period designed to monitor any trends which might shed light upon a surgeon's incompetence were lacking?-- I don't believe that the systems are set up to check for a surgeon's incompetence per se, they are set to reveal different trends for all practitioners. I would acknowledge that there was five surgical indicators needed to be enlarged and/or changed because particular vascular - we were no longer doing a large amount of vascular work and, in fact, we'd asked surgeons, in fact, all senior medical practitioners to come to bring forward their ideas about which clinical indicators they wanted to be measured as part of a involvement of their senior clinicians in management of the performance of the hospital. The systems are set up at the moment to look at specialties, to look at broad indicators, they're not focussed on the individual, they're not kind of in a form of a lead table.

See, at paragraph 399 to 401 of your statement, you say that the various departments responsible for organising meetings at which adverse outcomes and interesting cases were presented?-- Yes.

And that those meetings were regularly conducted in the surgical department, amongst others?-- That was my belief at that time, yes.

But that system didn't help whatsoever in relation to Dr Patel, did it?-- As we've now found out, no.

He'd chair the meeting?-- Yes.

And he'd control what cases were discussed and how they were discussed?-- With - as I said in my statement, I was not aware at that time that he was doing that, but certainly our aim was to ensure that the clinicians took on a management responsibility, this was part of their overall responsibility

to review their performance. It's far better that they're reviewing their performance, discussing with their peers as opposed to a top down directive from executive or elsewhere.

See, that's why it became so important that the staff had the opportunity to raise concerns held by them with yourself, Mr Leck and the Director of Nursing?-- I'm not disputing that, Mr Allen.

The problem is when they took those steps and, in particular, Ms Hoffman, you didn't take any action?-- I reject that, Mr Allen. I believe that I handled - I honestly believe that I handled those situations to the best of my ability at that time and that we were trying to engage these clinicians and this is not something that we were just doing at Bundaberg, this is part of a wider change in health care for the review of performance and it was very slow, it was very slow indeed and there were some that were far more readily keen to do that than others.

But you were not only failing to act, I suggest, but you were in fact, deliberately advising Mr Leck that he need not act?-- I don't understand your question, Mr Allen?

After he discussed with you that letter received from Toni Hoffman in late October, did you express reluctance to having a review of the matter?-- I don't believe I expressed reluctance, I was, as I said previously, I was keen to ensure that it was someone who had understanding, particularly probably based on experience working in a regional setting.

Did you tell Mr Leck that the allegations in Ms Hoffman's letter lacked substance?-- No, I didn't because I - how could I say that, Mr Allen?

Well, very good question. Did you say it though to Mr Leck?-- No, I didn't - look, I did not say that.

Did you say that no immediate action was required?-- I have no recollection of saying that, sorry, Mr Allen.

Well, what about this: did you tell him that you had no concern about oesophagectomies being undertaken at Bundaberg Base Hospital at that time?-- I can't remember if I was asked that question, Mr Allen.

Can you remember if you told him that?-- I can't remember saying that to him.

You can't remember that being a topic of discussion with Mr Leck in November or thereabouts of 2004?-- No.

Notwithstanding the matters that had been raised in Ms Hoffman's letter, you can't recall that being discussed, whether or not oesophagectomies should be undertaken at Bundaberg Base Hospital?-- I have no recollection of that being discussed. In the discussions we had as regards Ms Hoffman's letter, we were focussed on trying to get a

clearer picture, it was not down to specifics, Mr Allen.

You said that you weren't scared of Dr Patel; that wasn't why you failed to take appropriate action?

MR DIEHM: I object, Commissioner. The question is somewhat loaded.

COMMISSIONER: Yes, it is.

MR ALLEN: I'll withdraw it. Did you send regular e-mails to staff, including Dr Carter, pointing out the necessity to meet the elective surgery targets?-- I sent some e-mails, yes. I think there was some that were sent out.

Could I ask you to look please, and I don't have a copy, I apologise, at Exhibit 72 on the visualiser? Now, that's an e-mail that you sent to the Nurse Unit Manager of the operating theatre on the 8th of February 2005?-- Yes, it is.

Saying that, "Despite the hospital being 92 weighted separations behind target, the target is achievable."?-- Yes.

That "The target must be achieved"?-- Yes.

That, "It is imperative that everyone continue to pull together and maximise elective surgery through-put until June 30"?-- Yes.

With "Cancellations should be minimal with cases pushed through as much as possible"?-- Yes.

And indeed, "Cancellations have to be okayed by Dr Patel and others"?-- It was in a group situation, yes, those people formed the Theatre Management Group and as such had a responsibility to ensure that they were able to identify what could and couldn't be done.

Can I ask you whether it would have been possible to achieve the target you were referring to there if Dr Patel had ceased his employment as a general surgeon on the 31st of March this year?-- He did cease on the 31st of March. Undoubtedly, that would have caused - there would have been some slowdown in people for accessing elective surgery for general surgery problems, but there were other surgeons working there who provided surgical services and other alternative options would have been looked at.

Do you think realistically that if he'd ceased and the Bundaberg Hospital had operated as normal from the 1st of April, that you would have been able to achieve that target you refer to in the e-mail?-- I believe there was a possibility, as I said, looking at various options, one, looking at who of the surgeons is available and when they were available. Obviously before I took leave, recruited the locums who'd worked their previously who were able to undertake that similar type of surgery that he'd done, so I believe that it was a possibility, but-----

It was very very unlikely, wasn't it?-- I can't say, I can't say because I left very soon afterwards and I'm not aware of - I cannot remember the - where the target was when I left, and I have-----

Well, you know where it was in February 2005 and you knew that one of the strengths of Dr Patel, as you would put it, was his maximising of elective surgery through-put?-- No, the difference, it was - he was only a small aspect of the elective surgery through-put. We had a large number of surgeons, all of the surgeons were visiting elective surgeons, so my understanding was he did 20 per cent so obviously 80 per cent being done by others.

20 per cent of weighted separations?-- I believe it was 20 per cent of either the weighted of the other procedures or weighted separations, yes.

Well, that's a significant amount then if you're behind target and you want to achieve it?-- As I said, there are other options to be taken up and, in fact, what we were working on, in fact, what we worked on after this period of time was to increase our number of patients that received joint replacements after this time and, in fact, through some very good cooperation through various areas in the hospital, we were able to increase that and get ahead of our target and provide much needed relief for those patients who had had ongoing problems requiring joint replacement.

I suggest your approach throughout was to do as much as you could to try and keep Dr Patel there for the purposes of meeting your elective surgery targets?-- I do not accept that, Mr Allen.

That's why you were prepared to be dishonest with - when you corresponded with the Medical Board at that time?

MR DIEHM: Well, I object, Commissioner.

COMMISSIONER: Yes.

MR ALLEN: That's why you were prepared to offer him a position as a locum about a week before this e-mail?-- He requested that locum, we had started - we had started the process to replace him. He also was concerned about the impact on the teaching and he was prepared to continue to work under the restrictions that had been placed on him, but no, he was not seen - I did not see him as some form of machine.

He was the one, along with Dr Carter, the Nurse Unit Manager of - who's Muddy? That's a Nurse Unit Manager?-- That's a nickname for Karen Smith who's mentioned at the bottom of the e-mail who's the elective surgery co-ordinator.

The Elective Surgery Co-ordinator?-- And the Acting Nurse Manager of Operating Theatre, that is the team who would be involved in co-ordinating general surgery, Dr Patel being the

general surgeon.

Dr Carter, the anaesthetist and head of ICU and the nurse in charge of theatre and the elective surgery coordinator?-- As I said previously, Mr Allen, all elective - elective surgery includes general surgery but it also includes - included for us orthopaedics, some vascular work, some neurology and some plastics as well, so we had a broad number of specialties in which elective surgery - included elective surgery that was included in the elective surgery. Dr Patel in this situation was on the Theatre Management Group, he was the chair of that group and he'd also been appointed as the accountable officer for theatre.

Yes, and one of his strengths as you saw it and expressed it, was his efficiency in maximising elective surgery through-put?-- What he did is he worked with his team and the staff there to in trying to refine the process.

COMMISSIONER: You don't seem to be answering the question, Dr Keating?-- Yes, one of his strengths was to increase the efficiency of the theatre complex in conjunction with theatre staff.

MR ALLEN: You considered him a significant element in maximising elective surgery through-put to meet that financial year's target?-- I considered that his managerial capabilities in this situation to ensure that patients were not adversely impacted upon and patients were not put through multiple cancellations, which had occurred previously was important, yes, I believe he was - he improved the efficiency of the operating theatre in ensuring that there was as much access for patients requiring elective surgery.

So the managerial input but also the fact that he was a surgeon who would undertake, at least on your estimation, about 20 per cent of such surgery to meet such targets?-- In this situation, we were focussed on his managerial component.

I suggest that you were most reluctant to lose him at that stage as an employee of the hospital?-- I do not accept that he was that important that we could not have - you know, that the whole place would fall apart.

Will you answer the question? You were most reluctant to lose him as an employee of the hospital at that time?-- I was not most reluctant to do that.

And that you allowed the financial imperatives involved in the elective surgery funding regime to get in the way of your duties in relation to patient safety?-- No, I do not believe that, I do not believe that, Mr Allen.

Yes, thank you, Commissioner.

COMMISSIONER: Thank you. Ms McMillan?

MS McMILLAN: Yes, thank you.

CROSS-EXAMINATION:

MS McMILLAN: Dr Keating, my name's McMillan and I think you're aware that I appear for the Medical Board. Doctor, I just want to take you back to some questions that my learned friend Mr Douglas asked you in relation to the assessment forms that you filled out to forward to the Medical Board in relation to Dr Patel; do you remember him asking you some questions about those?-- Yes, I do.

All right. Now, as I understand your evidence, in your statement at paragraph 274, you indicated that the reason that you had filled it out in the way that you did was firstly because of haste; correct?-- Yes.

And secondly, because you understood Dr Patel would be reading it and that influenced you also in the way that you filled it out?-- Yes, as I-----

Thereby overrating him; correct?-- Yes, unfortunately I've overrated him, yes.

Yes, and is it correct to say that another reason, if you like, the way that you filled it out was you didn't inform them of the internal constraints that you'd placed upon Dr Patel, that is, no more complex surgery that required admission to the ICU; correct?-- Yes.

Was because you were of the view that it was not a matter that the Medical Board needed to be made aware of; is that a fair summary of your evidence?-- Yes, it is.

Right. Okay. Thank you. Now, can I just take you first to the initial assessment form that you filled out which, if I could have put on the visualiser which is DWK 7, and this relates to a period, doesn't it, in 2003. If you could just scroll down slightly, we'll see April to November 2003; correct?-- Yes.

And you'll remember Mr Douglas asked you some questions about this?-- Yes.

And, in fact, you will recollect that you accepted that you'd marked Dr Patel up in one category and marked him down in one category in relation to this assessment; remember?-- Yes, I thought it would have been one other difference, but yes, around about that.

All right. Now, if I could just take you to the second page, if you could go over to the next page please? And then scroll down to the bottom for the moment. You see that appears to be Dr Patel's signature there, doesn't it?-- Yes, it does.

Do you recognise it as being his signature?-- I do.

All right. Would that indicate to you that he read the document?-- Yes, it would.

All right. And would that be after you filled it in?-- Yes, it would.

All right. Do you see above that, it say, "Has the registrant had a formal feedback session about this assessment?"?-- Yes.

And it's blank?-- Yes.

Now, do you recall whether you had a feedback session with Dr Patel about this form that you filled out about him?-- I have - I think I have, yeah, I have some recollection of discussing it with him, yes.

All right. Now, if we could just scroll up that page please, you'll see, "List areas for improvement.", and you firstly indicate there, "Develop his understanding of the Australian Queensland Health care systems."?-- Yes.

And secondly, "Work towards implementing a formal approach to evaluation.", is it?-- Yes.

"Of the quality of surgical services provided at" - what's that?-- BHSD.

"Bundaberg"?-- "Health Service District".

All right. Now, could you just explain what you meant by, "Work towards implementing a formal approach."; what did you mean by that?-- We were developing a - what we called ERROMED Meetings, it's based on a philosophy, ERROMED is a name, a trade name I think owned by a group in New South Wales that looks at human factors, performance particularly as regards health.

Yes?-- And what it does is it engages clinicians to look at their own performance and to get the information to say is there a problem? What's the problem? What can we do about it? How do we investigate it? So it really gives them an opportunity to review their own performance and it works very well taking into account the different approaches.

Mmm?-- And we were trying to develop this at Bundaberg Health Service District when I got there, Peter Leck was very keen about this and we had had some success in some of the other areas which I outlined in my statement such as paediatrics in developing this process.

Mmm?-- And yes, and so we were very keen for Dr Patel to work on that in the surgical area.

And when you say "implementing formal" do you mean he alone or he amongst other surgeons at the hospital?-- I certainly intended for him with our other surgeons to do that, but I also was talking about his responsibilities as Director as well to take that leadership role in doing that.

Was he at all resistant to doing that?-- No, he wasn't.

Right. So, in essence, the areas for improvement were, as you have expanded upon them, not particularly critical of him then?-- No, they weren't.

All right. How did he take on board, do you remember, as you outlined to him, those areas of improvement?-- He initially took on board that. He acknowledged that, yes, he was intending to develop his understanding of the health care systems and that, yes, he felt that he would develop his formal approach or more formal approach to this and get some - get some more - you know, get the data and get the regular meetings looking at the data occurring.

All right. Now, I just want to go next to the further assessment form that you filled out in February of this year. Now, if I could go to the second page of that, please, for the moment, and scroll down towards the bottom. I see there is no signature, is there, of Dr Patel there?-- No, there is not.

As I understand from your statement, you didn't personally give the form to him-----?-- No, I did not.

-----correct? Are you sure that he in fact saw the form?-- I can't be 100 per cent certain. All - because obviously I didn't hand it to him. I gave this back to one of my staff members, and certainly the usual process was that we would give it to the person who received this, they had a chance to look at it, review it and then sign it, and if they had any problems they could then come back and we would have some discussion.

Would you be concerned that the person in fact who it was about, that is Dr Patel, had an opportunity and, in fact, was sure that he had seen what was his assessment, effectively?-- Sorry, can you repeat the question?

Were you concerned that, in fact, the person had in fact seen the form, that is had seen the assessment about them?-- I like to make sure that all the assessment forms were seen by the person.

Well, did you ever check, for instance, that his signature wasn't there on this assessment?-- I can't recollect checking after the event.

Now, if in fact it was a concern of yours that he would be reading the form and you say this influenced the way in which you filled it out, clearly you would had listed some areas of improvement in the first assessment form in 2003? You say he took on board your areas of improvement listed there. Given that, it is fair to say, isn't it, by the time of this assessment there were considerably more areas that you had isolated that he needed to improve upon, weren't there?-- Yes.

And I take it that you obviously had some rapport with Dr Patel, it seems?-- I believe I had some rapport. I certainly seem to be able to relate better with him than other people in the organisation.

Yes. Well, in your evidence you have talked about counselling him on a number of occasions about issues, such as the way he spoke to patients and spoke to staff at times; that's correct, isn't it?-- Yes, it is correct.

Well, given that, did you consider then, "Well, I have got some rapport, I would be able to put areas of improvement in because I can still talk to this fellow."?-- I couldn't do that, unfortunately, because some of this was related to - a lot of this was related to what went from Toni Hoffman's letter and what we done after that time as well, and therefore I would have to go through a large explanation of what - you know, to provide the facts behind that. And it had certainly been made very clear to me I was not to provide him with a copy of these allegations at this time.

Well, if that was a concern of yours, did you ever consider, for instance, approaching Dr FitzGerald, or someone in head office, to say, "I am in a bit of a difficult spot at this stage. I have got to fill this assessment form in and I am really in two minds. I really need to list some issues for improvement but I am concerned, with the upcoming investigation, about how much detail I should put in."?-- No, I didn't.

Well, there were other areas of improvement of a significant nature that you could still have put in that which didn't necessarily touch upon Ms Hoffman's letter, did they?-- I think unfortunately there was probably some small areas but a large amount of it focused on that and what had occurred, and my own views - as I said, I was trying to be fair and sure, I suppose. I was not 100 per cent any of those. I acknowledge that there - reviewing this situation now, there were better ways to do this.

Yes. Well, as you also, as I understand, told Mr Douglas, one of the roles you understood the Medical Board had when you were completing this form was at times they do investigate individuals, don't they?-- Yes, they do.

You were very much aware of that because of their involvement with, for instance, Dr Qureshi, correct?-- Yes.

You would be aware that one of the issues the Medical Board has to address is, for instance, safety of the public?-- Yes.

In weighing up issues about registration, et cetera, of practitioners, disciplinary action, et cetera?-- Yes.

If you were concerned about that, why wouldn't you have, for instance, put "pending external review"?-- I suppose it didn't - it didn't occur to me at that time.

Right?-- I - it didn't occur to me at that time.

Well, just on the internal constraints - I can take you to them if you wish - but Dr Qureshi - you would accept that you moved pretty swiftly on that situation, didn't you?-- I tried to work as fast as I could with the situation.

Indeed, for instance, a complaint was made to you on the 20th of October and two days later you had written to the Medical Board, hadn't you, outlining the issues of complaints-----?-- Yes.

-----about Dr Qureshi, and constraints placed on him, hadn't you?-- Yes, I did.

In that - in subsequent correspondence you in fact outlined to the board, did you not, the internal constraints you put upon Dr Qureshi, didn't you?-- Yes, I did.

I can put it up if you wish?-- No.

You recollect-----?-- Yes, I do.

-----that he was off the roster and also that he - well, before that he had to have a chaperone present?-- Yes.

But then he was off the roster?-- Yes.

You kept the board, you would accept, very well informed of the steps you had taken to ensure, I would suggest, patient safety with Dr Qureshi? Now, I accept different situation, different type of complaint with Dr Qureshi as opposed to the situation with Dr Patel, but I want to ask you why was it that you didn't adopt a similar process, if you like, of informing the board at least of the internal constraints you had placed upon your Director of Surgery?-- As I said yesterday, I was very hard - it was this personality component and there was this clinical competence component and the boundaries about where that lay was very hard, and I didn't have a very - wasn't very clear - yes, I wrote some points about it but I was - I was trying to be fair and sure and I just - yes, it was only using my knowledge but at the end of the day, I didn't feel - I wasn't a surgeon and I believe that the restrictions were placed on him related to complex surgery, taking - obviously would then take into account the concerns about the capability of the ICU. So it was both restrictions on him but it was also the fact we wouldn't do any of that operation on anyone. So that you know there - as regards the oesophagectomies, but, you know, there was some - I thought they were internal and more related to a situation which was not as clear as I found the Qureshi matter to be.

Well, that's certainly the case. Dr Qureshi, from what you wrote, was a very clear situation of your concern about the allegations made there. But that being the case, the only person carrying out this complex surgery was Dr Patel, wasn't it?-- There were other patients who have - there are other patients there who were having surgery which required ICU

care.

Yes, but the ones with long care - Mr Allen went through them with you yesterday in great detail - were Dr Patel's patients, weren't they?-- Some of those were but there were also other patients there who were under the care of Dr Gaffield and also sometimes under the care of Dr Thiele or had been under the care of Dr Thiele.

If I can put it to you this way: it is pretty serious to have your Director of Surgery with fairly - you would agree fairly serious constraints placed upon him, wasn't it?-- Yes.

And you didn't consider that the board should really know about that at that stage?-- At that time I didn't. I thought it was an internal consideration. I can see what you are talking about.

Doctor, can I just ask you this: was it really that - can I just go to the first page, please, of this assessment, right up the top. No right up the top of it, please. "The information on this form" - just read the first two lines to yourself. Can I ask you this: was it uppermost in your mind that if you included matters in this assessment form which really called into question Dr Patel's competence, serious issues about his competence, that the board may either fail to register him or place quite significant conditions upon his registration?-- No - no.

And that you were very concerned to ensure that his registration continued?-- No, I would not accept that.

Thank you, Mr Commissioner, I have nothing further.

COMMISSIONER: Thank you, Mr Freeburn?

CROSS-EXAMINATION:

MR FREEBURN: Dr Keating, my name is Paul Freeburn. I am for Mr Leck. Dr Keating, when you started at Bundaberg, you sat down with Mr Leck and discussed some objectives?-- Fairly soon after, yes.

And one of the matters which Mr Leck was keen for you to take on was clinical governance?-- We had discussions about clinical governance, yes - oh, yes. It was in - yes.

And clinical governance includes credentialing and privileging?-- That's one of the many areas, yes.

And you both agreed it was a big job?-- Yes.

And you were going to do it bit by bit?-- Yes, amongst the multiple responsibilities I had, given the time and resources

I had.

So you took on that project and from time to time you reported to Mr Leck on the progress?-- Yes, I did.

And, of course, you told Mr Leck about the problems you were encountering with the colleges?-- Yes, I did.

And the problem that you encountered with the colleges was that you couldn't persuade members of the relevant college to sit on the committees, is that right?-- Certainly in relation to the college of surgeons, that's correct, yes.

And I gather one of your initiatives to get over that stumbling block, that problem, was to join forces with the Hervey Bay district?-- No, in fact my - I arrived there and that had already been - that had already come together - this Fraser Coast Hervey Bay had come together, and that, in fact, the policy had already been developed with Kees Nydam and Terry Hanelt. And so - but I think - I understand now that was one of the reasons why they did that, was because of the previous problems prior to my arrival.

Right. Problems which you continued to have?-- Yes.

And just explain to me how is it that joining forces with the Hervey Bay District helps with the credentialing and privileging process?-- What it does is it brings together the Directors of Medical Services of the two districts combined. Plus, there is also a deputy on the Fraser Coast. Brings together two directors or the directors of appropriate specialty and you have a greater group - sorry, greater number of applications and there is far more consistency about how those applications are reviewed, and the privileges that are recommended as well. And if you have got one college person there as well, that means they have their time reduced, as regards they don't have to go to multiple meetings, they just go to one meeting. Have all those people in that specialty review at that one time. The other thing is you actually get, I believe, a better comparison and more open and transparent process that comes out of - well, because you have comparison between Fraser Coast and Bundaberg, which were fairly similar in regards their capability. So more open discussion about what could and couldn't be done.

Because it gave you more bargaining power when you ring up the college and say, "Look, we need somebody to come"?-- I think it does.

COMMISSIONER: Also gave you a wider pool of people to choose from for the credentialing and privileging committee, didn't it?-- To an extent, yes, it did, Commissioner, but some of those were set positions.

But enable you to access VMOs in Hervey Bay as well as those in Bundaberg?-- If - if they were suitable to the college, yes.

Yes?-- That's right, yes.

MR FREEBURN: Now, I gather Mr Leck got an electronic copy of Ms Hoffman's letter on the 22nd of October 2004?-- Yes, he must have because obviously - that's how I first got it. I got an electronic, yes.

You got an electronic copy from Mr Leck, did you?-- Yes, I did.

I gather, looking from the calendar, that's a Friday. So you got the letter, perhaps, that day or shortly after-----?-- Uh-huh.

-----the following Monday. And you and Mr Leck discussed the letter?-- Yes.

And at that stage you were convinced that the problems arose, or at least mostly arose from some personality conflicts that you have talked about?-- Certainly that was a significant proportion of the concerns, yes.

And that's effectively what you told - in not so many words, but that's effectively what you told Mr Leck?-- I believe that I said I could see there was a major component to that as well, combined with there was also those clinical issues or those patients identified by Toni Hoffman that she felt required further review. I could see - almost like there was two parts to the letter.

You both decided to interview the three doctors adverted to in Ms Hoffman's letter?-- Peter asked - Peter said we need - he was the one who said he wanted to do that and, yes, he asked me to arrange that and he wanted me to sit in with him.

So he decided and you agreed to meet with Dr Berens, Dr Risson and Dr Strahan?-- Yes.

I am just going to bring up on the TV an email of the 26th of October 2004. See, if we start at the bottom - this is on the Tuesday, the following Tuesday?-- Yes.

And it is from Mr Leck: "Hi Darren, just following up from our discussions last week." Now, that obviously means that you have had discussions probably the previous Friday, or thereabouts?-- Yes.

"Have you arranged a meeting with any of the relevant medical staff?" Now, that refers to the three doctors we're talking about?-- Yes.

"If not, I am happy to do so. Please let me know."?-- Yes.

Then you reply, "This matter is in hand, with some of the people mentioned on leave or just returning from leave."?-- Yes.

And he says "thanks"?-- Yes.

So you did have the meetings and we have heard evidence about those meetings with the three doctors, and you made notes of the interviews with those doctors?-- Yes, I did.

Again we have been through that. After the last of those interviews on the 5th of November, you and Mr Leck have a meeting to discuss what action you would take?-- I was - I recollect we had discussions after each of these interviews about what was going on.

Yes. But do you remember having a meeting after the last of them, the 5th of November?-- As I said, I remember meetings after each of them. I can't remember details of all of them.

Okay. But in any event, some time after those meetings you were still of the view that at least a good - at least a significant proportion of the situation was a result of personality conflicts?-- Yes.

And you were obviously of the view that no immediate action was required in relation to Dr Patel's clinical practice?-- I can't remember discussing that. I can't remember discussing being asked about that.

But that was your view, anyway, wasn't it?-- At that time, yes, I felt that there was a number that needed review and it needed to be looked at.

Do you recall Mr Leck asking you whether Dr Patel should be doing oesophagectomies?-- No, I don't.

Do you recall saying that those type of procedures weren't a cause for concern?-- No, I don't recall saying that.

So Mr Leck told you he intended to arrange an external investigation?-- Yes, he did.

And I gather that was because he regarded the matter as serious?-- Yes, he did.

And you agreed to that happening?-- Yes, I did.

And you said the external review should be conducted by somebody with regional experience rather than somebody from a tertiary hospital?-- Yes, that was my opinion, yes.

And later, either then or later, you suggested Dr Sam Baker do the review?-- I - thereafter Peter asked me to - to contact some other medical superintendents, directors of medical services. So I then spoke to Dr Andrew Johnson, who is the Director of Medical Services Townsville, and he mentioned Dr Sam Baker as one possibility. He also mentioned another doctor as well.

Did you mention Sam Baker as being a possible reviewer to Mr Leck?-- Yes, I did.

He wasn't keen on that choice?-- No, he wasn't.

And Mr Leck then pursued appointing an appropriate person?-- Yes, that's right.

And ultimately we know that Dr FitzGerald was appointed?-- That's right.

Now, I gather Dr FitzGerald was appointed or asked to do the review on the 17th of December, or thereabouts. Do you recall that happening or is that outside your sphere?-- I can't remember exactly when that was, when I found out, but, again, I can't remember exactly.

All right. But once Dr FitzGerald was appointed, you were obviously concerned about Dr Patel being treated fairly in this process?-- Yes, I was, yes.

And, in particular, you were concerned that he knew what the allegations were against him?-- Certainly, yes. I thought that was fair and reasonable, yes.

And I gather Mr Leck was also concerned about that?-- I think he was, yes.

And - but the view you both took, or the view - I suppose we can ask you about your view - was once there was an external review by Dr FitzGerald, it was really up to him to make the running in that investigation?-- Yeah, absolutely. I think that Peter, very early on, once he got the letter from Toni, was very keen to make sure it was an external reviewer who was acceptable to a number of parties, because I think, as he noted, the Nurses' Union had directed - or, you know, had asked Toni to make sure it came to them, but obviously wanted to make sure there was no - yeah, there was no-one from internal of the organisation, someone very external, and someone well-known, very impartial to the organisation. So, yes, he continued to push along that line.

COMMISSIONER: Just before you go on, can I ask you did Mr Leck explain why he didn't want Sam Baker to conduct the review?-- He just - yes, he did in a very short way.

And what did he say?-- Just that Dr Baker had been previously employed at Bundaberg Base Hospital and that he'd left under - the parting of ways had been acrimonious - they are my words - but he'd left under - with the relationship between Dr Baker and the hospital was not - was less than perfect.

Between Dr Baker and Mr Leck was less than perfect?-- Mr Leck didn't indicate it was him but one could assume so, obviously, as a district manager, and, therefore, responsible for the health service district. But he didn't actually kind of indicate it was him personally.

All right, thank you.

MR FREEBURN: Dr Keating, can I just show you another email?

While that's being brought up, I gather you and Mr Leck are saying, "Well, it is Mr FitzGerald's role to identify to Dr Patel what the allegations are against him."?-- Absolutely, yes.

And had you told Dr Patel what the allegations were against him?-- No, I didn't.

COMMISSIONER: How was Dr FitzGerald to know what the allegations were against Dr Patel without you informing him about the full facts relevant to Dr Patel?-- He was provided with information through Peter Leck. He was provided that information, as regards that allegation as regards the letter from Toni Hoffman.

So you left it entirely to Mr Leck to tell Dr FitzGerald whatever facts were relevant to Dr Patel?-- Yes.

But you knew a lot of facts which Mr Leck may not have known?-- I was-----

More than a dozen complaints about Dr Patel over the previous 12 months?-- As I - yes, I was - I was aware he had - he, like a number - he, like any of the other senior practitioners there, had a number of complaints against them. I didn't see that his number was any more or any less. In fact, I graded them on seriousness, related to advancement to what I call medico-legal claim. I didn't see that his number was any more or any less than the others, and, as Mr Mullins pointed out yesterday, yes, there was a number but I wasn't - didn't have a cumulative index in front of me. I dealt with a large number of complaints from a large number of areas which I think has been shown in other parts of information which have been provided to the Commission. So I didn't - it didn't register on my radar. Now, you know, it just didn't register he had any more or any less than others, Commissioner.

But you could have found all these facts. Didn't you think it was part of your job to provide Dr FitzGerald with all necessary facts relevant to Dr Patel, including all the complaints that had been made about him?-- I believe that Dr FitzGerald would be asking for - he was going to run his - he was going to run his investigation his way and he would ask for the information he wanted. Certainly that was the way it was portrayed to me, was we were to be responsive to him.

Not to volunteer any information at all?-- I wouldn't say not to volunteer anything, we were just to provide the information to him as he wished.

Only give him what he asked for?-- At that - at that stage, Commissioner, yes.

Yes.

MR FREEBURN: Can I just - Dr Keating, could I just ask you to look - can you scroll down to the bottom of those e-mails? See the back page? See there is a CC? You obviously get this

email. If we go back to the first page, at the bottom of it, you will see there is an email from Mr Leck to Dr FitzGerald?-- Yes.

Effectively saying, "Well, Dr Patel hasn't seen the allegations against him". Do you remember getting that email?-- Yes, I do.

And did you get any of the following - see the next one up? Dr FitzGerald replies about what he will and won't - what Dr Patel is entitled to?-- Yes, I think I have seen this before, yes.

And the first of the three e-mails?-- I think - yes, I think I have seen that before.

So that was a concern that you had, which was that even at this relatively late stage, Dr Patel didn't have Ms Hoffman's letter?-- Absolutely.

Thank you, Commissioner.

COMMISSIONER: Thank you.

MR DOUGLAS: These documents should be tendered if the witness has looked at them. Otherwise the record won't be complete.

COMMISSIONER: Yes, all right.

MR DOUGLAS: That should go for that earlier email as well, Commissioner.

COMMISSIONER: You can tender them now.

MR DOUGLAS: I think it should, lest it go on. So the exchange of e-mails of 26, 27 October 2004 between Mr Leck and Dr Keating should be tendered.

COMMISSIONER: 452.

ADMITTED AND MARKED "EXHIBIT 452"

MR DOUGLAS: And the exchange of e-mails of the 7th of February 2005 between Mr Leck and Dr Keating be tendered as well.

COMMISSIONER: They will be Exhibit 453.

ADMITTED AND MARKED "EXHIBIT 453"

COMMISSIONER: Yes, Mr Boddice?

MR BODDICE: Thank you, Commissioner.

CROSS-EXAMINATION:

MR BODDICE: Dr Keating, could I take you to your meetings with Dr FitzGerald on the 14th of February 2005? There were two meetings between yourself and Dr FitzGerald, is that correct, on that day?-- The first one was with me and the second one was myself, Mr Leck and I think Linda Mulligan was there for some of the time, I think.

So there was an individual one with you in the morning?-- Yes.

And then a joint one in the afternoon?-- Yes.

And in the individual one was Ms Jenkins also present?-- I don't recollect she was in the morning one.

In the afternoon one was she present?-- Yes, she was.

And during the afternoon meeting, I suggest to you that Dr FitzGerald or Ms Jenkins asked questions about whether there had been any patient complaints against Dr Patel?-- As I said, I recollect that it was only related to major claims or like medico-legal claims.

See, I suggest to you that they asked you questions along the lines of how do the patients feel; what's the level of patient satisfaction; have there been any patient complaints against Dr Patel?-- As I said, I recollect only as regards claims. I think we talked about - we talked about large claims and I said to him - I remember saying, in fact, the major claims in my mind were the ones that related unfortunately to - you know, included Dr Gaffield and I felt there had been a number - all I could recollect off the top of my mind, as I said, was a number of smaller ones related to Dr Patel but the mainly - I thought they mainly focussed on the larger ones.

But that would suggest, Dr Keating, that certainly if you had gone on to mention minor complaints against Dr Patel, that certainly you understood that what they were asking about were complaints against Dr Patel?-- Yes.

Not just medico-legal claims against Dr Patel?-- Yes.

And you said in your statement that, in fact, you spoke about the fact there's been some minor patient complaints regarding Dr Patel which had been resolved?-- Yes.

Did you give details of what they were?-- No.

Did you give an indication of how they'd been resolved?-- No.

What were those complaints that you were referring to?-- Some - some of these complaints that had been discussed - discussed were in my statement.

Well, are those complaints discussed in your statement, do you rank them so that some don't fall in the category of minor complaints or would you class them all as being minor complaints?-- I felt the major - the major ones - yes, as I said, are - I had a broad division between - I had a very broad division between major and minor. For me, major were those ones that had progressed to a - some sort of medico-legal program under the PIPA process.

COMMISSIONER: So if no-one made a claim, civil claim against the hospital, it was not - there was nothing major about it, as far as you were concerned?-- Certainly - yes, in the first instance, Commissioner, yes.

MR BODDICE: Well, do you accept that there was some questions asked by Dr FitzGerald and Miss Jenkins about - you know, what was the patient satisfaction, how do patients feel?-- I remember more them giving us a rundown or a debriefing of that as well. I don't recollect - recollect that. They may have asked - they may have asked that, but I don't recollect that.

Well, certainly what you do recall is that there was some discussion and you recall it as being about medico-legal claims, but you accept that the discussion was obviously broad enough that you took it to the point where you mentioned there had been some minor complaints against Dr Patel but had been resolved?-- I think I - you know, I talked - they asked about complaints and we said - well, I think - and I said, well, there's no major ones against Dr Patel and unfortunately they were all related to Dr Gaffield and there was a number of minor ones. There was no further questions. I can't remember any further questions being asked about that. I think - you know, I - and I at that stage didn't see any major trend in the ones that I can remember unfortunately and I couldn't remember all of them at that - I couldn't remember all at that stage.

So do you now accept they did ask about were there complaints against Dr Patel?-- As I said, yes, they talked about

complaints but we talked-----

And in your statement you were saying no, they only asked about medico-legal claims. Do you accept they asked about complaints against Dr Patel?-- I accept they - I accept that they talked about complaints but that my answer focused on major-----

Well, I suggest to you that the answer that was given was that there weren't any complaints against Dr Patel?-- I would reject that, Mr Boddice.

But what you do say is that - in response to that you certainly didn't tell them about any of the complaints that you have been asked about and that you have dealt with in your statement?-- No, I wasn't.

Indeed, all that you indicated was that there were minor complaints that had been resolved?-- Yes.

And you didn't indicate there were any outstanding complaints in relation to Dr Patel?-- I couldn't - yes, I - well, I can't - I can't remember if I indicated that or not.

Well, certainly from your statement you are indicating that the only reference you recall is about minor-----?-- Oh, yes.

-----complaints that had been resolved?-- Yes, yes.

You are not suggesting that you gave any indication that there were significant complaints?-- Apart from the one related to Mr Bramich.

Apart from the - Nurse Hoffman's statement, there'd been a reference to the Bramich matter, of course?-- No, also there'd been a PIPA claim for Bramich.

But apart from that, you gave no indication that there were other complaints, except to the extent that you say that you said minor complaints that had been resolved?-- That's right.

And I put to you that, in fact, what you indicated was that there were no complaints?-- I indicated there was this major/minor.

Thank you.

COMMISSIONER: Thank you. I might take a break now. You all know it's 2 o'clock now?

MR ANDREWS: I have informed the parties, Commissioner.

COMMISSIONER: Can I just mention one other matter before the break, and this relates to Mr Leck's evidence. I haven't made any further orders and I didn't intend to because I rather assumed that counsel would agree on those only who wish to examine Mr Leck coming in to the courtroom, and on the other matter I referred to which I proposed to make directions. If

there are any problems about those matters, I hope you will raise them before Monday. We will now adjourn.

THE COURT ADJOURNED AT 10.35 A.M.

THE COMMISSION RESUMED AT 10.53 A.M.

DARREN WILLIAM KEATING, CONTINUING:

RE-EXAMINATION:

MR DIEHM: Thank you, Commissioner. Dr Keating, I will go through a few matters in something close to resembling the order in which they arose in your evidence over the last few days initially. One of the earliest matters that Mr Douglas asked you about concerned your provision of the information you obtained from your Internet search concerning Dr Patel's registration in the United States to Dr Buckland. Now, you have explained that that search was one that you carried out on the evening of the 6th of April. Now, at the time that you obtained that information, did you form the view that that was significant information with respect to the controversy that had arisen?-- Absolutely, yes, it was very significant.

When you first found the information, did you have in mind as to what you would do with it?-- Initially I was in a quandary. I believe that it needed to be given to the senior executive of - senior executive managers of the health - of Queensland Health as soon as possible, but I was initially unsure how to do that.

When did it occur to you that Dr Buckland was going to be in Bundaberg?-- I think I - I went to bed pondering the problem that night and I did in fact realise Dr Buckland was due up there with the Minister the next day.

At that point in time did you make any decision about who you would provide that information to?-- I thought that seeing Dr Buckland was coming, he was the most appropriate person to provide that information to.

Did you have a view about what was the proper way for you to pass that information on to him?-- I thought it was appropriate I do it face to face-----

Yes?-- -----and tell him the information that I gleaned, as opposed to through intermediaries. I believe that it was appropriate to tell my opinion - again, I basically gave him a

summary of that information.

Right. Now, Mr Douglas asked you questions about the document which appears at page 241 of the annexures to your statement-----?-- Yes.

-----being your memorandum of the 6th of April. And you say in that document that you are aware, as you phrase it, that all medical staff at BBH are very unhappy with the recent events leading up to Dr Patel's resignation?-- Yes.

You then go on to talk about a lack of natural justice afforded to Dr Patel. What were you speaking of in terms of the lack of natural justice?-- At this time the - we had the allegations from Toni Hoffman, we had the resultant visit from the Chief Health Officer, but we didn't have any results from that. So there was no - there was no fairness, there was no balance, there was nothing there in which - yes, you have got allegations, and these are serious allegations against an individual, and he did not have - did not appear to have any opportunity to respond to that. It appeared very imbalanced in allowing him to provide any form of response to that. It certainly created a large amount of media frenzy. In response they'd also - there was a large number of people in the hospital, particularly medical, that - who were very concerned about that. They just saw this as this could possibly happen to them in the future as well. They were very scared about that.

You say "a large amount of medical"?-- All the senior medical staff, particularly the overseas trained doctors.

Had they expressed those views to you?-- Yes, they did.

You were also asked some questions concerning Dr Patel's claims to you or statements made to you that you have related about pursuing specialist registration. You have given some evidence that you had conversations with Dr Patel in which he indicated that he would do that. Can you tell us when you first had conversations with Dr Patel about that topic?-- Oh, look, it would have been probably - it was certainly 2003.

Yes?-- It was probably latter half - September/October-ish time because we were starting to talk about his next contract and he was asking me about, "Well", you know, "what do I have to do?", and so we went through the process of - I went through the process of explanation about what he had to do, and he seemed to take on board that and then asked for some more information later on. I referred him to some websites.

What information did you give him either in that conversation or in your subsequent conversation? I'm looking for the totality of the information that you gave him about what he would have to do?-- I explained to him that basically there's two ways to go, you can either get recognition as a specialist throughout Australia or be deemed as a specialist in a certain jurisdiction. But either way - and basically the processes are the same but they are different. You can't apply for one

using the same set of paperwork, and I explained that you have to initially apply to the AMC, the Australian Medical Council, that you have to provide a large amount of paperwork to them and thereafter once the Australian Medical Council had ticked off on the veracity of that they then send a notification to the respective college where you have also - where that person then submits - has already submitted their paperwork to them, and they then review that and carry out potentially some form of interview process and evaluation process. I then talked to him - talked him through that, said we would help where possible, we would be happy to help pay for some of the fees, because we had done that with other specialists or other people going down that line, and I also explained the outcome for him as well as regards the fact he would move on a different pay scale.

Now, did he express any interest in following that course?-- Yes, he did. Yes, he did. He certainly showed interest to me. In fact, later on we - I put it down as part of his performance and assessment - Performance Assessment and Development agreement and he signed that and was happy to do that. So, yeah, he started to work on that. In fact, I think I wrote a letter - he asked for a letter which I wrote at that stage as well.

A letter to who?-- A letter to basically the AMC and the College.

Supporting his participation in the program?-- Yes.

Did you follow up this issue with him subsequently?-- Yes, I did.

On how many occasions?-- Oh, look, on several occasions, several occasions.

Over what time period?-- Over the following - well, over the following year.

Yes?-- And he said to me that yes, he was working on it. Then he said he was waiting for some information to - needed to get some information from America, he was waiting on that. I know he didn't have access to that because he didn't have all his papers in Australia. He would have to get them when he returned to America.

On reflection, these explanations that he gave you, knowing what you know now, do you think he was just putting you off?-- Yes. Unfortunately.

But at the time you accepted at face value his explanations?-- Yes, I did. Yes. It seemed reasonable and he's an individual who was here and had moved his family or his household to here. So, yes, that seemed quite - that would seem quite reasonable.

Now, you were asked questions then subsequently about your meeting with Dr Berens and Mr Leck on the 29th of

October 2004, your note of which appears at page 166 of the bundle. Now, a couple of things arising out of it. In the third paragraph there is a reference in there to Dr Berens questioning Dr Patel's judgment to undertake some procedures, in particular - or by way of example, vascular and Whipples procedures?-- Yes.

The Commissioner asked you, as I recall it, about the weighting for the funding of elective surgery for Whipples procedures?-- Yes.

In terms of vascular procedures, for the sorts of vascular procedures that Dr Patel - I'm sorry, I am referring to the sort of vascular procedures that you understood Dr Berens to be referring to, Dr Patel may have performed at Bundaberg Hospital, are you able to say what sort of weighting they had for the program?-- Low, certainly far lower than the Whipples.

Were these major vascular procedures?-- No, they weren't. Major vascular procedures would be a repair of the abdominal aortic aneurism, carotid endarectomy, or femoral endarectomy, and Dr Patel was doing none of those procedures at all.

Thank you. Now, the final statement that Dr Berens made that you have - well, I should say the statement that you have recorded at the end of that note where you said he believed he continued to work with Dr Patel in the future, in context for the way in which this was being explained to you, can you tell us what you took Dr Berens to mean about his view concerning Dr Patel's continuing working at the hospital?-- I took it that he believed that, yes, he should be - he should continue to work there, that he continue to do the due days that he was carrying out. He - yeah, as an anaesthetist - the anaesthetist had a very close relationship with the surgeon and I use them as a - certainly a significant indicator as regards whether they will or won't work with someone or whether their ability - sorry, not their ability, their wish or not to work with someone is a very important indicator as regards how they believe that person operates in their competency. I certainly took that as an endorsement of Dr Patel continuing to work there.

COMMISSIONER: Did you ask Dr Berens specifically about Dr Patel's competence?-- I think that we - I can't remember exact - exactly. I can't remember exactly, Commissioner.

MR DIEHM: Even if you didn't ask him precisely in those terms, were you seeking information from him to gain an impression about his view of Dr Patel's clinical competence?-- Yes, I was. Yes, I was. I think that we tried to explain that in the context there. We tried to give each of these doctors the opportunity to discuss and come out and say yes or no, and we certainly explained to them that what they said would be kept - you know, they would be kept - you know, appropriately - confidential.

COMMISSIONER: What did you ask Dr Berens then?-- We asked - we explained there'd been a number of - we explained there'd been a number of allegations.

When you say "we", who conducted the interview, you or Mr Leck?-- Both of us.

All right?-- I think initially Mr Leck started it off and that there was a number of - you know, allegations about Dr Patel's competence.

So you outlined some allegations?-- We outlined - sorry, outlined there was some allegations. We didn't outline the allegations per se.

Did you - were the allegations that you spoke about the allegations in Nurse Hoffman's letter?-- Yes.

Did you specify what those allegations were without saying who they came from?-- No, we didn't.

Well, how did you ask the question? How did you identify the allegations?-- We just said there was a number of allegations - we said there was a number of allegations related to Dr Patel and he said it was - came from Toni Hoffman. It was relating to - you know, care of patients, particularly around the ICU.

Right?-- And we'd - you know, what did Dr - what did Dr Berens have to say about it - what did he say about these, could he add any more to it, was he concerned, and we started the try and develop and ask him these questions.

Did you identify any examples?-- I can't remember that we did.

Right?-- Only - not from the letter, only from what he - we only talked about the - what he talked about.

MR DIEHM: Would it be fair to assume from what you have just described that you weren't seeking his comment about specific issues raised by Ms Hoffman?-- Yes.

Were you seeking his views - his own views about Dr Patel's performance?-- Yes, definitely, yes. We noted - we certainly noted that he - how we came - we used him because he'd been brought to our attention by Toni Hoffman but, yes, we were certainly seeking his views as a senior clinician.

Now, you related in the note that you raised some concerns that were based on two particular cases that he remembered?-- Yes.

Again in this context or by the context in which he raised those cases, did you take him to be making any observation critical of Dr Patel's suitability generally for performing the role of a surgeon at the Bundaberg Hospital?-- No, I didn't.

Concerning your meeting with Dr Strahan, a note of which appears at page 168 of the bundle, Dr Strahan related there a circumstance concerning a patient who he believed to have had a Whipples procedure and who subsequently died. Did you - I take it from your evidence two days ago now that you didn't follow up an investigation with that particular patient's circumstances?-- No, I didn't.

Did it transpire, as Dr Strahan gave evidence during the course of the former Commission, that, in fact, that patient did not have a Whipples procedure and did not die? I would assume - be fair to assume it would not have been particularly helpful to you to have done so?-- That would be correct.

With respect to Dr Risson, the note concern with his consultation is page 167. One of the matters that was canvassed in your conversation with Dr Risson again concerned a patient who was reported to have died following the insertion of a CPB line. In the context in which Dr Risson related this matter to you, did you understand Dr Risson to be saying that that circumstance demonstrated in his view incompetence on the part of Dr Patel?-- No, it didn't. He didn't - didn't - suggest - he did not - I did not get that impression from him about that.

On your impression, why was he making comment about that particular case?-- He'd heard about this from a hearsay perspective and I think he was more upset that he'd been involved in the consenting of this patient and that when he'd spoken to that patient he'd outlined the risks and concerns that unfortunately one of those would occur. He was more upset about that.

You didn't, I gather from your evidence, seek out the patient's file to review it-----?-- Not.

-----after Dr Risson raised this matter?-- Not at the time. Unfortunately he couldn't remember the patient details or timing, but no, I didn't.

But assuming that you have been able to identify the file, and given your evidence that it was an accepted complication of a procedure of that kind, if you yourself had got that file out and examined it, do you think it would have been informative to you yourself as to whether or not there was incompetence on the part of Dr Patel in the case of the management of that patient?-- No, not - no, I did - no, I don't believe so. I think it would have shown the procedure had occurred and the complication - you know, complication had occurred and had been recognised. Unfortunately in medicine, there is no guarantee - there's no absolutes and unfortunately in this situation this patient suffered a complication.

What sort of person - what qualifications would a person need to have to review a case like that to reach any conclusion?-- I believe that either a patient - a person who was an intensivist, an anaesthetist or an experienced surgeon.

And looking at it as an isolated case and just looking at the file, even for a person of that qualification, are they likely to be in a position to make any sort of assessment about the skills of the surgeon involved?-- No. I don't - I think they can get some very preliminary details, but I think they - ideally they really need to observe the person doing the procedure and they also need to also look at the totality of the number of procedures being done by that person and complication rate of that person doing that procedure. So I think they need some greater information and ideally watching, observing this person doing that in a number of situations.

Now, at the time of Dr Risson raising the matter with you, were you aware of that case being one of the ones mentioned in Ms Hoffman's letter?-- I think I was, I think I said in my evidence that I was and I think I was aware, it was one of the ones that was mentioned in the letter.

Doctor, I want to ask you some questions now about Dr FitzGerald's involvement and your discussions with him. Before moving to that though, something that I will canvass with you concerns the summary - or the document, I should rephrase that, that is Exhibit DWK 66 to your statement which appears at page 183 and following and the following pages to 188 and thereafter. That document, was it prepared in one sitting, as it were, or was it put together over a period of time?-- It was put together over a period of time.

And in terms of the process that you went through in putting it together, what parts of it - or perhaps if I'll rephrase it and ask you this: did you initially reflect upon the various matters described in the first few pages of the documents being issued and incidents-----?-- Yes.

-----concerning Dr Patel?-- Yes, I did, yes, I reflected upon that, yes.

And then subsequently did you put together the issues of consistent concerns the summary and the larger issues that were described in the document?-- Yes, I did.

Now, the matters listed under "Consistent Concerns", are you able to say whose concerns you were relating those as being?-- These were my deductions of the concern - of the concerns that had been raised as opposed to my concerns per se.

So the concerns that had been raised by other people?-- Yes.

Doctors, nurses and the like?-- Yes.

The part then that appears under the heading of "Summary" aside from the last two paragraphs which appear to be as much relating to what you said and did, but the first two paragraphs under the summary, whose views are they reflecting?-- These are reflecting the views of the information that's been, of the information that's been provided.

COMMISSIONER: But your views?-- Sorry?

But your views of the information provided?-- Yes.

MR DIEHM: Thank you. The document that is next in the bundle, DWK 67, appearing at 189 to 190 is then also a detailed opinion, as it were, about the performance of Dr Patel. Whose opinion does that purport?-- That is my opinion.

Now, when it came to meeting with Dr FitzGerald, the matters that are listed under "Consistent Concerns", you were asked

questions about what you did and did not tell Dr FitzGerald about your views concerning Dr Patel?-- Mmm-hmm, yes.

If you were to share with Dr FitzGerald at that time your views concerning Dr Patel, would they have included all of those matters listed under "Consistent Concerns" as your own opinions?-- No.

Would they have included relevant matters as you identified them out of the document appearing at DWK 67?-- Sorry, can you just repeat the question?

Would they, in relating to Dr FitzGerald your views about Dr Patel at that time, would they have included the matters that you identified as being relevant as they appear in DWK 67 at 189?-- Yes, I think - yes, some of those were, yes.

Now, when you spoke to Dr FitzGerald on the 14th of February 2005, did you understand him to have already been provided with certain information?-- Yes, I did.

Did you understand him to have Toni Hoffman's complaints or complaint, I should say?-- Yes, I did.

Did you understand him to have also been provided with documents setting out complaints or incidents that were worthy of being considered? Did you understand him to have been given any other documents apart from Toni Hoffman's complaint?-- Yes, I understood him to have been given the peritoneal catheter analysis and that's what I had understood that he had received from Mr Leck. As I said, I also understood he asked for an amount of clinical information - clinical benchmarking information, I know that he received and asked for.

All right. And when you say "clinical benchmarking information", are you talking about him being provided with the benchmarks or with the information to perform a benchmarking exercise with?-- He provided - yes, we provided him with the information for the hospital.

Yes?-- And was, yeah, for him to then, he then took it upon himself, he was going to do the benchmarking himself.

All right. Now, when you say that you understood him to be given the peritoneal catheter dialysis audit, and you said that you didn't understand him to have been given anything else, by that do you mean that you don't know that he was given anything else or do you mean that he may have been given other things but you don't know what they were?-- Yeah, exactly, he may have been given anything other things but I don't know what they were.

All right. Mr Leck was taking responsibility for that aspect?-- Absolutely, as a continuation of what he'd done so far in managing the situation.

All right. Now, when you had your meeting with Dr FitzGerald,

it doesn't matter for present purposes whether it's the morning one or the afternoon one, did you tell him anything about limitations on the scope of surgery to be performed by Dr Patel at the Bundaberg Hospital which had been imposed?-- Yes, I did.

And what did you tell him?-- Explained to him that firstly, he was not doing anymore oesophagectomies and then as a continuation of that, that he would not be doing any elective surgery which required elective general surgery which required post-operative ICU care at Bundaberg Base Hospital.

Did you tell him why those limits had been imposed?-- Yes.

What did you tell him as to why?-- I explained - we explained to him this was based on ongoing concerns, particularly a, the letter from Toni Hoffman, b, Mr Kemps, and c, I think there was some further letters received by Mr Leck and also in relation to the patient P 26, P26.

All right. So from at least that information that you had provided him orally at the meeting as well as what you knew he had been provided with, what was your understanding as to the extent that there were issues that had been raised about the competence of Dr Patel - sorry, I best rephrase that. From that information you had given him and that you knew he had been given, did you have a belief as to what - or as to the level of understanding Dr FitzGerald had about the range of complaints and issues that there were concerning the performance of Dr Patel?-- Yes, I did.

And what was that?-- I believe that he understood that there'd been concerns about oesophagectomies and, in fact, some major or complex surgery requiring ICU care and that these - and that Dr Patel would no longer be doing those operations at Bundaberg Base Hospital. In relation - it's much to do with Dr Patel but also to ensure that the concerns raised by others had been taken on board and that the ICU capability was not being over-extended.

Leaving aside the identities of particular patients, did you understand or did you have a belief as to Dr FitzGerald's awareness of all of the issues that had been raised concerning Dr Patel's performance?-- I believe he had a very, very thorough awareness, particularly after he'd completed all his interviews, and with also the number of files that he asked for to be copied and taken away as well.

All right. I would assume that having read Ms Hoffman's letter, you would also have expected him to be aware of the details of the identities of the significant number of patients?-- Yes, and in fact, I think that they'd asked - sorry, his office had already asked to get a copy of the files and take them with them, and during the course of the meetings they identified more patients and asked for more of those files to be copied which was done.

COMMISSIONER: Do you know the full list of those files that

that office took?-- No, I don't, Commissioner.

Where would that be?-- I would presume with the Chief Health Officer.

Well, apart from the Chief Health Officer, would someone in the Bundaberg Hospital have identified those as they went out?-- The Health Information Manager, Gail Chandler may be able to help with that, yes, certainly the request went down, the request went down to her department so she may be able to identify those, Commissioner.

MR DIEHM: Commissioner, I'm told that there is a list of those patient files annexed to Dr FitzGerald's statement.

COMMISSIONER: Oh, I see, thank you.

MR DIEHM: Yes. Around about GF 11 Ms Feeney tells me.

COMMISSIONER: Thank you.

MR DIEHM: A better memory than mine.

Doctor, from your point of view then, given the sort of information that Dr FitzGerald had been provided by yourself or Mr Leck and had requested and subsequently received, can you conceive of any reason why you would desire or set about to conceal information about some complaints from him?-- No, I cannot, no, I can't conceive of any reason why he'd want to do that.

Furthermore, in your understanding, if Dr FitzGerald did know who was responsible for initiating, that is, directly requesting the involvement of somebody in an external audit of Dr Patel's performance, did you understand him to be aware that that was a request that had come from the executive and specifically Mr Leck?-- Yes, I did.

When Dr FitzGerald met with you in the morning, did he tell you about what his plan was for the day with respect to his investigations?-- He outlined that he would be doing a series of interviews.

Did he tell you who he was intending to interview?-- No, he didn't.

What was your expectation as to who he would interview?-- My expectation is that he would interview, a, all those people that had - where a complaint had been raised or been mentioned within the complaint or - sorry, any members of staff who'd put in a complaint - I'll start again, any members of staff who put in a complaint related which, you know, included Toni Hoffman, Dr Miach, any of those other members associated being included such as Dr Risson, Dr Berens, Dr Carter, so it was kind of working through all the people that had been associated so far and asked about information in relation to Toni Hoffman's initial complaint.

Now, he met with you again in the afternoon, as you've related?-- Yes, he did.

Did you garner from the discussion in the afternoon whether your expectation was met, that he had met with those people?-- Yes, my expectation, yes, he had a full day, but I don't think there was any - he certainly didn't say he missed anyone, I think that he was to do one interview the next day from Ms Mulligan when she returned from a course, but no, both he and Ms Jenkins were very happy with the number of people that they had seen.

Moving on to another topic, Dr Keating: the Commissioner asked you a question yesterday about whether, on your understanding, Dr Patel was universally disliked at the hospital, and I draw your response again to that question firstly?-- I believe that he polarised opinion about him at the hospital, so you either liked him or you disliked him, and over a period of time the proportions changed, probably increase number of people disliked him, but I don't believe he was universally disliked, but there was increasing number of people who did not like him.

And in terms of people's views about him as a doctor, in your understanding, were there - we know quite obviously from an early stage that Ms Hoffman had some concerns about him, but in your understanding, were there doctors and nurses who had positive views about him?

MR DOUGLAS: It's an imprecise question, positive views about what? His personality? His party jokes? Or his clinical judgment and skills? It needs to be precise, Commissioner.

MR DIEHM: I had just asked about it, Commissioner, but I'll make it more precise, Commissioner.

As a doctor, as a surgeon, were there doctors and nurses who had positive views about him?-- Yes, there were, yeah, there was a number of those, and even know they may not have liked him as a person, they did continue to respect him as a clinician and continue to work with him, and I think this related to this personality situation and that, yeah, you have multiple personalities in any organisation and health care is no different, it sometimes probably has even more personalities, but in so doing, these professional people aim to work together for the best that they can despite whether they like or dislike a person. I also know that there were patients who definitely liked him. We received letters of congratulations, I know that, you know, that pales into insignificance now, but then at the time we were receiving letters of commendation for him and his efforts and with his time.

COMMISSIONER: You're not going to put much weight on what patients say though, are you, in relation to their expertise to judge his competence?-- We have to place much weight on as their good and their bad, Commissioner. Obviously, we get complaints, we also get complimentary stuff as well and it's

always nice to get complimentary reports about any clinician.

It doesn't answer my question. You personally, as a doctor, are not going to place much weight on the judgment of a patient as to the competence of a surgeon?-- I have to, yes, I have to place some, I have to place some, Commissioner. A member of the public or a patient judges a practitioner's competence, not only their technical skills but on their communication skills, that's how they assess a doctor.

Mmm?-- And in that situation, there's their communication and their - the empathy and feelings they display for them, and yes, that's one of the things that is assessed, Commissioner, I - but I agree they don't talk about the totality of their competence, it's just - it's one aspect of it.

MR DIEHM: Something they may speak about though, doctor, would be their satisfaction with their outcome?-- Yes, they would certainly be satisfied with their outcome, yes.

And leaving aside for the moment Dr Patel's apparent skills or otherwise, in terms of that sort of feedback from patients, did that have a bearing on your state of mind when hearing of complaints of Dr Patel's at times poor communications with patients?-- Yes, it did.

And does that mean that you didn't believe patients or patients families when they complained of Dr Patel's poor communication?-- No, I definitely believed them, definitely believed them.

What effect did it have on your state of mind then?-- I think it equilibrated out and it showed that Dr Patel was like any other practitioner who the majority of the - you know, the majority of the time had very good communications skills but there are sometimes for various reasons that their communication skills let them down and/or people don't communicate with them well. But, you know, communication is a major issue throughout the practice of medicine and I did not consider that Dr Patel was any different and potentially probably, you know, any different from any other practitioners. In fact, we had other practitioners there who were worse and in response to that, we continued to bring Mark O'Brien, who was a world recognised expert on this area to the hospital to conduct communication workshops, team workshops in this area for senior clinicians, be them medical, nursing or allied health.

In terms of the views, as you understood them to be, of the medical and nursing staff at the hospital concerning Dr Patel, as at the beginning of 2005, in your understanding were there still practitioners who had respect for his skills as a surgeon?-- Yes, yes, there were. People like Dr Carter, Dr Berens I know still continued to work with him and also Gail Doherty is the Operating Theatre Nurse Unit Manager, Elective Surgery Co-ordinator, she also worked in theatre, other elements in the Outpatients department, his junior staff and even the senior nurse on the surgical ward and in day surgery

as well.

Now, let's deal with the time, we have to go to the time shortly before you went on leave in late March of 2005; were there still people who apparently supported Dr Patel as a professional, as a surgeon?-- Yes, they did.

COMMISSIONER: And you took it from the fact that they continued to work with him that they supported him as a surgeon?-- Yes, I did. Certainly based on my experience, Commissioner, and also in teachings and even in discussions with fellow medical administrators, yes, that is certainly important, and in fact, I think I heard Dr Carter in his evidence describe a situation where when he was in charge that they'd withdrawn that support for any form of anaesthesia for a visiting surgeon and, yes, yes, it was - I, certainly it's a very strong indicator for me.

MR DIEHM: By that are you referring to a proposition that an anaesthetist who does not have confidence in the surgeon's ability to perform the surgery that is proposed safely will, as a matter of ethics, refuse to anaesthetise the patient?-- Yes, that's correct.

COMMISSIONER: You mean should, don't you?-- No, I believe will, sir, will.

All right.

MR DIEHM: Well, in the instance of those particular doctors, you would have expected them to comply with that ethical principle?-- Yes, I had no reason to doubt their ethics in any way, shape or form.

And even short of that, even if they weren't prepared to take that last step of refusing to anaesthetise the patient, did you have an expectation as to what you would be hearing from them if they held that degree of concern?-- Yes, I expected that they would be coming to me individually and/or as a group and potentially with, you know, Dr Carter leading them to say that they either wanted major restrictions and/or that they were not prepared to do any form of anaesthesia for Dr Patel.

And should we take it that that didn't happen?-- Yes, that's right, it did not happen.

Can I ask you about the Visa application in February of 2005? The history which needs to take us back to December of 2004, when the original contract was offered to Dr Patel, the four year contract. In the time immediately prior to making this offer, what was your understanding as to the period of time, the maximum period of time that a Visa for an overseas-trained doctor coming to work in Australia could be obtained for?-- Prior to the?

Prior to the offer of that contract?-- That it had just changed so it had gone from, I think one year up to four years.

Now, at that point in time, what was your belief, right or wrong, about the period of time for the contract of employment that would have to underlie such a Visa application?-- I thought the contract had to match the Visa period of time.

So it had to be a four year contract if you wanted a four year Visa?-- Yes.

Again, rightly or wrongly, did your understanding about that change between then and the beginning of February 2005?-- Yes, it did.

And what was your understanding after that change?-- My understanding after that time was that he - you could apply for a four year Visa without necessarily having a - with a shorter employment period and as I said yesterday, this was related to me by my staff who were dealing with this on a daily basis, but they were also trying to grapple with the changes that had occurred with the changes under the Immigration Act as part of the Medicare Plus agreement, and they were in constant contact with the Department of Immigration, certainly if we did anything, if they had any queries, the Department of Immigration always rang us and let us know, so that's, yeah, rightly or wrongly, we thought that had changed.

In terms of credentialing and privileging, Dr Keating, the issue about problems with the respective colleges providing nominees, when did you first become aware of that?-- I think it was in 2004 - in the early part of 2004.

Prior to that time were you expecting the college nominees to be provided as a matter of course?-- We had come to an - oh, Dr Hanelt and I had initially looked at all our senior medical staff and identified who may or may not be a possible nominee that was suitable to the college, and thereafter Dr Hanelt said he would contact the colleges to see - to get their opinion and I accepted this because he said he had been a senior - or been in the Queensland Health for a greater period than I, far longer period than I, and appeared to have appropriate - certainly seemed to know people in the organisation far better than I did.

In the meantime with Dr Patel and with a large number of other doctors, you proceeded to recommend to Mr Leck that interim privileges be granted to those doctors?-- Yes, I did.

In deciding to grant those privileges - interim privileges, what sort of things did you take into account?-- I must say I took into account the fact that they - where they - where they had done their training, what training they'd done, who - if they'd been recruited by someone, what type of selection process had occurred during that recruitment. Obviously their curriculum vitaes and what was included in that as well. Obviously how they were performing in that period of time as well.

Now, with respect to Dr Patel, in deciding to grant or deciding to recommend interim privileges to him, what information did you take into account?-- I took into account that I knew that he - knew that he spent the vast majority of his working life in America and, in fact, he'd done a training program - done a training program in America, spent a vast period of time in America, and he had been recruited by a reputable recruiting company, and that I believed that they'd done checks on him at that time, and also, you know, his referees. I think his curriculum vitae did include his referees, referee reports, and also took into account how he was performing at that stage as well.

Right.

COMMISSIONER: You didn't make any attempt to contact any of those referees?-- No, I didn't, Commissioner. I believed that had been done in his recruitment process prior to him arriving.

By the recruitment?-- By the recruiter - by the recruitment company and - and/or Dr Nydam, who was acting in my position prior to me arriving.

Where did you get that information from?-- Sorry?

Where did you get that information from, or did you just speculate about that?-- I speculated upon that based on what was the normal recruiting process.

Thank you.

MR DIEHM: Doctor, there has been some focus, of course, in your evidence as well as in other evidence, about complaints that were made concerning Dr Patel. Yesterday in answer to a question from Mr Mullins you made the observation that you had enough complaints coming in concerning patient issues without having to go and look for them. You had enough work to do with what you had coming in the door without proactively going out after them?-- Yes.

Now, it has been canvassed with you, as is set out in your statement, a number of patient complaints concerning Dr Patel. In terms of the number - and just concentrating on the number for the moment - of complaints that you received about Dr Patel from patients and having regard to the number of patients in general terms that Dr Patel was seeing at the hospital, to your knowledge did there seem to be anything disproportionate to the number of complaints that you were receiving about him?-- No, I did not see it was anything disproportionate.

Do you have, or did you have during that time period, doctors about whom you received less complaints than Dr Patel?-- Yes, I did.

Did you have doctors about whom you received more complaints?-- Yes, I believe I did.

COMMISSIONER: Who were they?-- Director of obstetrics and gynaecology, and also the other staff obstetrician gynaecologist.

MR DIEHM: In terms of the nature of the complaints that you received from these patients about Dr Patel, was there anything, by way of a pattern or trend, about the content of those complaints that caused you concern?-- Based on my recollection over a period of different times, no, I could not identify any trend or anything else.

And in terms of the content of the individual complaints themselves, was there anything about those that suggested to you that there was some special reason to be concerned about Dr Patel in a generic sense?-- No, there was nothing there to suggest that. I accepted that, as I said yesterday, the practice of clinical medicine is both an art and a science and is not 100 per cent perfect, and that each of the practitioners will always - will make mistakes, and it is potentially - you know, in a large organisation we have got more people that can pick those up, and when they are brought to their attention they can work to correct those deficiencies. No, I couldn't - and so I saw this as him being representative of other practitioners. I didn't see that as just isolated purely to Dr Patel.

One patient in particular that you were taken to yesterday was Ms Vicki Lester who had a complaint about some packing being left in a wound. What was your involvement in the management of her complaint - at that time in 2004 rather than about any made in 2005?-- At that time it was purely related to her application for patient travel subsidy. As regards - as regards the patient travel subsidy and her - the decision to - whether or not she could go to Rockhampton.

Now, another matter that was raised with you concerned the adverse event form that was lodged in the latter part of 2004 - I think it is dealt with at paragraph 340 of your statement. It is an adverse event form concerning a laparoscopic cholecystectomy that had some postoperative complications. Now, it has been observed several times during the course of this Commission that that procedure is a common procedure for a hospital like Bundaberg to be undertaking?-- Yes, it is.

Now, does the fact that it is a common procedure mean that it is a procedure without risk?-- No, it doesn't.

And the fact that the risk presumably means that from time to time, without necessarily bespeaking any error of technique or judgment, or, rather more to the point, negligence on the part of the surgeon, that there can be complications?-- Yes, that's right.

Given that it is a common procedure, if the surgeon commonly performing it suffered from a serious problem in his technique, would you have expected to see more than one adverse event form produced?-- Yes, I would have. I would have seen - I would expected to see a number of them potentially over a period of time but - yes, I would have expected to see a significant number of them.

There is some evidence before the Commission - and it has not been suggested it was evidence brought to your knowledge - but evidence from Dr FitzGerald about there being a high complication rate reported statistically from databases with respect to that very procedure. Firstly, assuming those statistics to be right, that wasn't resulting in adverse event forms being generated?-- That's right.

Secondly, the data that is collected, if it comes out of, at any stage, the Transition 2 database, how reliable is that information, in your understanding, with respect to demonstrating of itself that there is some particular problem with that surgeon carrying out that procedure?-- I believe it is certainly - it is more reliable than some other databases, but it is reliable in that, in fact, it brings together more information from a different number of other databases, so you can actually drill down and get some more reliable information. But there is still - at the end of the day it relies on the coders who code everything that occurs and potentially they will code everything that occurs, whether it is clinically relevant or not, and there is - you know, if you are referring to you still have to actually audit these

individual reports that come out of Transition 2, to have that information clinically validated. And, in fact, we'd started to get some of our senior clinicians going down to the coders when they were coding these discharge summaries and the episodes of care to help them code it and get an idea what they were doing and provide some further clinical input so as to get more reliable and valid data. But certainly it is more reliable than the database that Dr FitzGerald used.

And the database that Dr FitzGerald used was?-- It is from the health information centre.

Now, you have used the phrase "clinically validated". Another expression might be "clinician validated"?-- Yes.

What does that involve?-- It is the clinician going through and actually - and validating and saying yes or no that really - that diagnosis, or this complication, or what's been reported really did or didn't occur according to what the coder has picked up. The coder has some limited information but they take the information and turn it into a recognised code or using a recognised code. But at the end of the day you need the clinician in there and saying yes, that really did or didn't occur, or, actually, that is right, that's right, because, in fact - for instance, I will take an example - it is not surgical - but a patient may have suffered from what I call a transient ischaemic attack, which is a short term loss of neurological function, but they also may suffer a stroke and there is a timeline cut-off, and also related to whether the symptoms resolve or not. And, in fact, it is the clinician who is far more likely to say, "Yes, it is a stroke", or, "Yes, it is a transient ischaemic attack." And, in fact, we had a problem along those lines. That's where the clinician actually says, "Yes, this is what happened."

Now, in terms of surgical complications as an example, is there some advantage in there being clinician validation of complications that might be recorded by the codes?-- Yes - again, yes, they can say whether they are clinically relevant or whether, you know, that's right, whether it did occur. They have potentially surmised from this - they can actually say, yes, this did or did not occur. They can say whether it is clinically relevant, really affected the outcome of this patient.

If you had seen a high number of adverse event forms coming through for procedures such as laparoscopic cholecystectomies, would that have caused you to take any particular action?-- Yes, it would have.

What action would you have taken?-- I would have gone to the DQDSU and obtained some further information about what - get some comparative data from previous years about the total number of laparoscopic cholecystectomies compared to this year's complications, potentially what types of complication as - so as to get some idea regards numbers and also potentially identify surgeons and, you know, if you need to you can identify cases as well. I think one of the concerns

here is that you also want to identify who actually did this operation. Sometimes it will always be coded under the surgeon under who the patient is admitted, but on occasion it can be done by a more junior officer or junior medical officer under the tutelage of that specialist.

Mr Mullins put a proposition to you yesterday using the smoke and fire analogy, that you thought that around the time of February 2005 that there was a raging fire regarding Dr Patel but that you tried to stomp it out for fear of being discovered as not having properly managed Dr Patel and his misadventures during his time at the Bundaberg Hospital. You rejected that proposition. I just wanted to ask you this: if you had that view, if you thought at February 2005 that Dr Patel was guilty of serious misadventure and was incompetent, what action would you have taken?-- I would have - by that stage we'd already placed restrictions on him. I would have spoken to the district manager and outlined a number of options which could have included - could have included suspension and/or also major report to investigative agency and or get, you know, such - such as the Medical Board or further external review or the College of Surgeons.

Dealing with some questions that Mr Allen asked of you yesterday, he asked something about whether, on receiving Toni Hoffman's complaint, and reading it, and seeing that she'd suggested that she had met jointly with you and Dr Joiner, whether you took any steps to correct her assertion in that regard. Did you see it as important to do that?-- No, I didn't.

At the time of Ms Hoffman's email to you of 19 June 2003 relating to the patient Graves, the second oesophagectomy patient, Mr Allen showed you that email. Do you recall where Dr Carter was at that stage?-- Yes, I believe - I recall he was on leave.

You were asked today by Mr Allen about the documents that you obtained as recorded in your statement in the middle of 2004 at around the time of investigating the Baxter program, the documents you obtained showing statistics concerning peritoneal catheter dialysis patients and the numbers of them. Now, it was said that in the time period identified there that there were eight patients, but on your understanding does that mean there were only eight catheter placements?-- No, it doesn't. It means that eight patients could have underwent a number of procedures. Potentially they may have had one, two, three.

If the document records 11 placements, is that consistent with the fact that the patients can sometimes have more than one?-- Yes, it does.

Ms McMillan asked you a question about the Medical Board document that appears at page 210 of your statement, which is the document 13 February 2005, and in particular that page which shows that you had signed the document but the signature for Dr Patel, as provided for him, is not completed,

contrasted to the one in 2004. Now, the document that's annexed to your statement bears the barcode of Queensland Health. Are you aware that's the source of that document, if you look at page 210?-- Yes.

Is that where that document was obtained from, to your knowledge?-- Yes, to my knowledge, yes.

Now, the process at Bundaberg Hospital in terms of the completion of these documents - or this particular document, would it ordinarily be the case that you would complete the assessment before the document is signed by the registrant?-- Yes.

Does - did the hospital keep a copy of each such document before sending - or make a copy before sending it on to the Medical Board?-- I think we certainly - our practice was we would try to do that.

Yes?-- So we tried to do that but I can't - I didn't personally do that. It was administrative staff that did that and basically tried - certainly tried to do that, but we also had people who came after short periods of time on leave and obviously there was a handover of duties. Whether they got these intimate details, I don't know.

Thank you. In answer to a question posed to you by the Commissioner earlier today - and, again, dealing with Dr FitzGerald's visit - you talked about the distinction in your mind regarding patient complaints into minor and major, and you said that you regarded patient complaints as major only if they were medico-legal cases in the first instance. You added that phrase at the end of your answer. What do you mean by "in the first instance"?-- Certainly I categorise them as regards major and minor, major if they progress to being a legal sense in the first instance, but obviously also looking at the totality of them and if there is any trend in those, any trend in those - particularly in those major ones. It is a prioritisation system. So you look at what's most important, what's causing most concern and trying to get some trends out of that. Whether there are any trends in there that are identifiable as well.

Is there a reason for identifying medico-legal cases as major complaints?-- Yes, because they take up a far greater time, commitment. As regards the review - or the review of the complaint, the investigation of the complaint, potentially arranging someone else to review it as well, plus the drafting of responses, the follow-up of any further concerns or complaints as well. The ongoing liaison with the lawyers as well. There is - I can certainly say I can remember a number of cases which have been very protracted and prolonged and they require a large amount of time.

Does it say anything to you about the seriousness of the subject matter if it has become a medico-legal case?-- Yes, it does, yes.

What does it tell you?-- It tells me that it is certainly serious for the - both the patient - from a patient's perspective and certainly for the practitioner and also the health service district as well.

Now, in terms of your response to the question posed to you by Dr FitzGerald or Ms Jenkins about the fact of any complaints having been made, as to whether there were any patient complaints which had been made, you say that your response was that there were only minor complaints which had been resolved. To your knowledge were there any patient complaints - leaving aside the episode concerning Mr Bramich which Dr FitzGerald was apparently aware of anyway, were there any patient complaints that were not at that stage resolved?-- To my knowledge there was no - there was none.

Doctor, at the time that you received or became aware of the complaint of Ms Hoffman shortly after 22 October 2004, regarding what might be done about it and, in particular, done about Dr Patel continuing work at the hospital, it would be fair to say that the range of options that were in theory open to you and to Mr Leck were to dismiss him, suspend him, to investigate further, including by the appointment of an external investigator, to impose limits, either temporarily or permanently on his practice, or to do nothing?-- Yes.

And at that point in time, out of that range of options, what did you think was appropriate to be done?-- I thought it was appropriate that there be an investigation, or an external review occur.

And why was it that you thought that that was appropriate as opposed to the other options I have mentioned?-- These were serious allegations against what appeared to be an apparently senior surgeon, and that there wasn't - that they'd - there were a number of allegations. It was not much detail about each individual case per se, and I think that it required an external reviewer who was very experienced in both the art of surgery and also understanding of the regional situation, because these were major allegations, we had to be fair and sure to everyone concerned. We also had to take into account patient safety as well. I had to be fair and sure, reasonable, natural and due process. It was a complex - in my mind, anyway, a complex weighing or relationship that had to be taken into account as well, I suppose. My view, to be fair and sure.

Did you perceive at that time that your decision to not curtail Dr Patel's practice jeopardised patient safety?-- No, I didn't.

When you filled out the forms for the Medical Board in February of 2005, thereabouts, you have accepted that you overrated Dr Patel?-- Yes.

Were you conscious at the time that you were overrating him?-- No, I wasn't.

In terms of the - do you recall the circumstances in which you filled out the form? Do you remember actually doing it?-- Yes, I do.

Was it a task carried out in your office?-- Yes, it was.

Did you feel under any particular time pressures at the time of completing the form?-- Yes, (a) relating to completing the form; (b) related to numerous other work pressures.

At the time you completed the form, would you have a view about whether it was appropriate for Dr Patel from the point of view of patient safety, provision of reasonable service to patients by him, as to whether it was appropriate for him to continue to work as a surgeon at the Bundaberg Hospital?-- Yes, I did.

And what was that view?-- My view was that he could continue to work there with restrictions that had been placed upon him and further monitoring of his ongoing work and the changes if he continued on - the changes as I outlined yesterday to Mr Douglas.

If Dr Patel was to be reregistered, were was your - what was your view as to where he would be working?-- If he was to be reregistered, my view was he was to be working in the Department of Surgery.

At the Bundaberg Hospital?-- Yes.

And nowhere else?-- No. That's right, he would be only working there.

Because he was restricted, in your understanding, to working at the Bundaberg Hospital?-- Yes, that's right.

Did you intend to mislead the Medical Board-----?-- No.

-----in filling out that form?-- No, I didn't.

Excuse me for a minute if I may, Commissioner.

COMMISSIONER: Certainly.

MR DIEHM: I may be cutting across an area which Mr Douglas was going to pursue further following his - some of the questions yesterday and some of the information he's provided since then, but I will do so anyway.

COMMISSIONER: Would you rather wait until Mr Douglas-----

MR DIEHM: I will do that.

COMMISSIONER: I can give you an opportunity to ask further questions if you want to.

MR DIEHM: Thank you, Commissioner.

MR DOUGLAS: I have disseminated some information I obtained.

COMMISSIONER: You have finished otherwise?

MR DIEHM: Yes.

COMMISSIONER: Yes, Mr Douglas?

RE-EXAMINATION:

MR DOUGLAS: Commissioner, I have probably got about half an hour's examination.

COMMISSIONER: Right.

MR DOUGLAS: And you smile because you love estimates, or perhaps you dislike them.

COMMISSIONER: I don't trust them, Mr Douglas.

MR DOUGLAS: Yes. Could I ask this document be put on the overhead. I am going to put the transcript on the overhead from my examination of this witness. Could you just advise me of the first page. Is it 6880? Yes. I bracketed a portion, Dr Keating, of some evidence which you gave when I was examining you several days ago, and before you read it I would ask you to keep in mind - I would ask you to keep in mind the answer which you gave to Mr Diehm a short time ago to the effect that - and I have noted it - you were not conscious about overrating Dr Patel when you completed the assessment form to the Medical Board in or about late January, early February 2005. Is that still your evidence to which you adhere? Is that still your evidence to which you would adhere?-- Yes.

Read the parts I have bracketed. It goes over a page or so?-- Yes.

Do you agree that in response to a question asked of you by the Commissioner during the course of my examination several days ago you gave an answer to the effect that at the time you completed that form, your honest opinion was that he was not excellent, that is Dr Patel was not excellent? You used that language in the former question. Do you agree that was your answer?-- Yes.

Do you resile from that answer?-- I think we were talking about - I don't resile from that answer.

Your answer then was, "My opinion was not that he was not excellent."; that is, you were saying he wasn't excellent?-- Mmm.

And yet that's - do you agree that's what you have said there?-- Yes, yes.

Yet that is what you appended your signature to, a word "excellent" to describe his performance in that form; wasn't that so?-- Yes.

When you signed that form with that language "excellent" on it, you knew that you were acting - that is, you were making a representation to the Medical Board which was dishonest?-- At that time I did not set out to mislead the Medical Board or to

dishonestly portray that in any way. That "excellent" forms Form - I think it was the Form 1 and I think it may also - I think you will find it's probably very similar to the previous year's one.

COMMISSIONER: But-----?-- Yes. But, no, I-----

MR DOUGLAS: Sorry, Commissioner, you were going to ask a question?

COMMISSIONER: I was going to ask a question. If that answer is correct, it is plain that you are not expressing - you were not expressing your honest opinion in that answer?-- My honest opinion when it said "excellent"?

Yes?-- My honest opinion? My honest-----

Your honest opinion was that he was not excellent and you expressed the opinion in that answer that he was excellent, and I'm putting to you that in this situation you are not - you were not expressing your honest opinion; isn't that correct?-- Sorry, you have lost me, Commissioner.

All right. I will start again. Your opinion at the time you signed that form was that Dr Patel was not excellent. That's what you said in that answer there that's underlined. You agree?-- Yes.

However, you said in that form, which you signed, that he was excellent?-- Yes.

You agree with that?-- Yes.

Therefore, you did not express your honest opinion when you signed that form?-- I - my honest opinion at that time - my honest opinion was that his overall performance reflected that. In reviewing that, and I acknowledge that the "excellent" fits with the rest of those ticks, and that's part of overrating of this - this person.

Dr Keating, I don't want to mislead you, but based on your answers to me so far, I would draw the inference that when you signed that form you did not express your honest opinion. I am giving you an opportunity to explain that, if you can, and you fail to do that. But you are welcome to have another chance?-- I believe - at that - at that time - the word "excellent" has been used and I have - and I believe that that matched up with - you know, that was used and I acknowledge that it was - was used and I didn't set out to mislead anyone along these lines, and I was talking about performance, I was not - I was talking about overall performance. I was not talking - and, yes, my honest opinion as regards him changed over this period of time, Commissioner. I can't - it changed and it dramatically changed after this information became available, but it was complaints, it was resolved. I know I have written things down. All I can say it was changing and I did - I can see that there are inconsistencies and I acknowledge there are inconsistencies.

Thank you.

MR DOUGLAS: To be fair to the witness, I will pursue it. Could you turn to page 207 of the bundle of exhibits to your statement?-- Yes.

Do you see that in the non pro forma section of the document there is a name at the top of the page, "Name of applicant: Dr Jayant Patel"?-- Yes.

Do you see that below that there is a title given, "Director of Surgery."?-- Yes.

Do you see that there is a box three down, "Surgical"?-- Yes.

Do you see that there is typed there the words, "To provide surgical services to outpatients and in-patients presenting to the Bundaberg Base Hospital."?-- Yes.

"To assess patients presenting to surgical clinics.", full stop?-- Yes.

"To operate in theatre.", full stop?-- Yes.

"To participate in", inverted commas, "'on-call'", close inverted commas, "roster overnight and weekends in conjunction with staff surgeons.", full stop?-- Yes.

"To educate and guide junior medical staff at ward rounds, clinics and in theatre.", full stop?-- Yes.

"To provide education sessions to medical students regarding surgical presentations.", full stop?-- Yes.

"Dr Patel has been in this role for the past 12 months and his performance is rates" - you agree it meant "rated"?-- Yes.

"As excellent.", full stop?-- Yes.

Those words I have read out, sir, were printed on that document at the time you signed it?-- Yes.

Your signature appears at the base of the page?-- Yes.

The role you see - as that word is there in that document, you understood when you read the document that to refer to all of the activities which are printed above that word, namely commencing with the words, "To provide surgical services"?-- Yes.

When you completed this document, you knew - you were attesting to your belief in the truth of the matters which were printed on this document to which you appended your signature?-- Yes.

At the time you completed this document by appending your signature to this page, your belief was that in those various

roles Dr Patel could not be described for the past 12 months, that is the 12 months prior to you appending your signature, as having a performance which could be rated as excellent. That was not your belief?-- As I tried to say yesterday, over the past 12 months - over the 12 month period, taking into account all that - all that I had, both positive and negative, at that time he - you know, at that time I believed he was better than average. I agree that "excellent" is overrating him. As I said yesterday, this form is part of his overall assessment. I believe this has overrated him. It's the wrong choice of word. I acknowledge it's the wrong choice of word. That is inconsistent with my overall view of him at this time relating to the information I had and of all that - that hadn't been verified.

At the time you appended your signature to this document, your belief was not that he could be rated in that role as "excellent"?-- As I said, I have - as I said previously, I have overrated - I have overrated him and - the word "excellent" is wrong.

That statement, I suggest to you, was untruthful?-- Was - I do not believe it was untruthful. As I said yesterday, this goes with part of the assessment which shows that - on page 209 that it was overrated and I acknowledge that the word "excellent" shouldn't be there and I - I made an error. I made an error in judgment.

I want you to take your mind back but still considering this issue to the fact that about two - sorry, about three or four weeks earlier in early January, you recorded your views on your internal notes. You recall that, don't you?-- Yes.

You recall being asked questions about that by me and by other persons beside me and behind me?-- Yes.

I want to show you this document in the transcript again, please. It's from pages 6874 and 6875. Again, I've bracketed it for you to direct your attention. While - I am remaining with this issue but do you recall Mr Diehm, your counsel, also asked you about that document and whether or not they were your beliefs or perhaps the beliefs of others that you were recording?-- Yes.

Look at the bracketed portion, please. I have put a "1" beside the start of it. I want you to read through that and I will ask you some questions about whether you adhere to that evidence now?-- Yes.

Scroll it through, please. Tell us when you have finished that page?-- Yes. Yes.

I suggest to you the answer you gave to those questions which are bracketed there are true, those answers are true?-- I provide - I provided those answers and yes, they - they are related to the information I - that I gathered and that I viewed that I formed in - related to the information I'd had gone through.

You don't resile from those answers do you?-- No, I don't.

That was information, I suggest to you, which was within your consciousness at the time that you completed this document in late January, early February 2005 to the Medical Board?-- This was information that I - these were my deductions relating to the information that I had gone through and had been provided and at that stage I didn't have full verification of what - of that information and, yes, these were what I'd written down. Were they - was I 100 per cent sure? Was I prepared to commit myself? I - I wasn't and I didn't.

Having regard to the information you received, these were your opinions?-- These - I believed that they were my deductions from - from that.

And having regard to those deductions that you record there, which are a negative, that is to the extent they are a negative rather than of a positive nature, it was quite untrue for you to say, as you did, three or four weeks after that Dr Patel in his role, as I read out a moment ago, listing in that document, had a performance which could be rated as excellent?-- As I said, I agreed that "excellent" is - is overrating him. I tried to look at the total year and the total amount of work that he'd done across the broad range of responsibilities he had and, yes, he had some negatives, but he also had some positives and was I able to verify all this? I did not believe I could verify all of this.

COMMISSIONER: That is not what you are being asked, doctor. You are just going around and around the point. The point is, it seems to me at the moment, that the opinion that you expressed there that he was excellent was a dishonest opinion. Now, you can explain that away if you like, but you are not going to explain it away by rambling around the way you have been just now?-- At - at the time - at the time I held him better than the average, Commissioner. At the time I held him better than average. I think my answers to Mr Allen showed that as well yesterday. I acknowledge that the word "excellent" is overrating him.

MR DOUGLAS: Do you accept that the word "excellent" in light of what you have recorded in the document, which is on the screen now, the extract from the transcript, is a gross exaggeration?-- I do not believe it was a gross exaggeration, it was an overexaggeration.

Again, I don't want to mince words with you and I will go on, but I suggest to you it was a lie, a bald faced lie?-- I do not - I reject - I reject that, Mr Douglas, and I did not set out to be dishonest in any way.

You knew that the Board, that the Medical Board of Queensland - I will start again. You believed when you completed this document that the Medical Board of Queensland would be carefully considering your comments in its endeavours to

decide whether or not Dr Patel would be registered for the period in question?-- Yes.

You were asked by Ms McMillan, and I want - Commissioner, I think I should tender that because I have marked the portion of the document that I have alluded to.

COMMISSIONER: Two pages of transcript, aren't there?

MR DOUGLAS: Yes, yes. They are reverse pages.

COMMISSIONER: Those two pages of transcript will be together - there was a bit more than that.

MR DOUGLAS: No sorry, there are two lots of pages, yes. Thank you very much.

COMMISSIONER: Those two pages of transcript will together be Exhibit 454.

ADMITTED AND MARKED "EXHIBIT 454"

MR DOUGLAS: I will take you to the document if you wish and please tell me if you want me to take you to it to assist you, but do you recall Ms McMillan, acting for the Board behind me, took you to the fact which you have given evidence of on a couple of occasions that when you completed this assessment form, which follows the document I have just taken you to, you were perhaps more generous in your ratings and your comments because of your belief that Dr Patel would read them?-- Yes.

Now, let's just establish a number of matters as to what Dr Patel knew-----

COMMISSIONER: I don't think I have all those pages of transcript. How many pages were there?

MR DOUGLAS: Can I check that, Commissioner? There were two lots of pages of transcript.

COMMISSIONER: Yes, but I thought they were two pages in each. I have three pages

MR DOUGLAS: I said one was double-sided. I apologise. I didn't make that terribly clear.

COMMISSIONER: All right. Thank you.

MR DOUGLAS: As at the time you completed that assessment form, I suggest to you there are a number of matters which you had already told Dr Patel about that would involve him in some restriction having regard to the views you had formed by the time this document was complete. Can I take you through them-----?-- Sure.

-----to make it precise?-- Please.

You were told Dr Patel by the 13th of January 2005, a couple of weeks before this assessment form, that he would no longer be undertaking oesophagectomies?-- Yes. Yes. Yes.

That is he was restricted from undertaking oesophagectomies at the Bundaberg Hospital?-- Yes.

They were taken out of his repertoire?-- Yes.

Isn't that so? The second thing was you had already told him that if there were other complex procedures which may involve extended stays in ICU that he wasn't to undertake those either?-- Any stay in ICU.

Any stay in ICU. So that's another restriction you told him about, what, by about the 13th of January?-- Yes.

And the third thing you told us about also in evidence was that you had indicated to him that you would relieve some of his administrative burdens so as to reduce the prospect of him perhaps making mistakes and any consequence?-- Yes.

You told him about that as well?-- No, that was - that was a decision related after the event, after - it related to that three or four month appointment at that time.

Thank you. Well, those two matters we have identified, surely there wouldn't be any cause for embarrassment in those respects if he was to read about them in this document, if you'd completed them in this document, because you'd already told him?-- Those were the - yes, yes, but I also have to explain to him why we are writing this and I think that - you know, he would have been pushing for more and more information.

But you'd already told him that, in fact, they were going to be imposed and he didn't ask you for any more information at that time, did he?-- Yes, he did, and as I said yesterday, he in fact got very upset at that meeting because he wasn't given - he wasn't given the information related to that.

So you told him that he wasn't to undertake any more oesophagectomies. Did he say to you, "Now, look, you tell me why I can't do any more."? Is that what he said?-- No. As regards the oesophagectomies, no. As regards the total - when we were talking to him about the second restriction, he certainly at that meeting on the 13th of January, he was certainly very upset about the lack of information that had been provided to him about the specific allegations, and he - he reluctantly accepted that, reluctantly accepted that, but he said, "I will be considering my position.", and that's when he then put in his resignation the next day.

I see. So, let's stick with the oesophagectomies then. Why not write that down as a restriction?-- I - as I said

yesterday, I believed that it was much - that was as much related to taking into account that the hospital didn't have the capability to do it as much as related to him doing it as well.

But it was more than that, as you'd expressed in your notes of early January. You believed that he erred in proceeding to undertake oesophagectomies, given what view you then formed about the inadequacy of the Bundaberg Hospital to deal with the possible ICU consequences of him doing so?-- It was - it was both, and I was balancing both. I believed it was an internal restriction saying we were not doing oesophagectomies and, yes, he would not be doing them but, you know-----

That was the end of it, wasn't it, because it wasn't as though that was up for grabs at a later time in the sense that you weren't giving consideration perhaps to - after the audit - allowing Dr Patel to renew his oesophagectomy procedures, were you?-- I had - I had an open mind. I didn't expect that would be agreed to, certainly because of the fact we'd taken the ICU component in there, but that's - I see it as - I am sure there are a number of surgeons around who have - who don't perform a number of these procedures and I don't know that's written down as regards a restriction on their Medical Board registration.

Right. I want to ask you about different matter now. I want to ask you about your management style that Mr Diehm canvassed with you. Would it be correct to say you would describe your management style whilst DMS at Bundaberg Hospital as being essentially or broadly as reactive not proactive?-- I would have to say I was both reactive and proactive at various times. It changed depending upon the situation. I believe that the way the hospital ran, I probably was more reactive because of the way matters and issues cropped up as opposed to - ideally I would like to be more proactive as opposed to reactive.

You have been wont to use a number of colloquialism and metaphors in giving your evidence, smoke and fire and bite you on the bottom and things like that. But can I just put it to you in this context, your management style, I suggest, is one whereby if a problem - call it a bush fire - threatens to burn down your hospital, you put it out and stop the hospital being burnt down, but you don't go looking for the source of the fire?-- I would - I would reject - I would reject that, Mr Douglas.

You gave evidence when asking - asked questions by Mr Diehm to the effect that none of these doctors, say the anaesthetists, came to you and said, "I won't anaesthetise patients because Dr Patel is the operating surgeon." That was the effect of your evidence?-- Yes.

Your management style is such that you'd need a deputation of an anaesthetists at your door telling you that they weren't going to do it before you would pull Patel out of surgery. That's your style, isn't it?-- That is one aspect - that is

one aspect and one indicator, as I say. It is not the only component of my style.

And in fact, you used Mr Berens as an example on one occasion and you recall you elicited from him on the 29th of October 2004 that he believed he could continue to work with Dr Patel in the future?-- Yes.

Do you recall that?-- Yes.

Those were your words. And in the same breath, the same conference, you've recorded that he told you that in his view "Dr Patel appeared reluctant to admit to other doctors his own mistake or error in care of patients and" - again, written in your words - "he didn't appear to be completely accountable and honest about his surgical actions."?-- Yes.

Serious allegations put in that language?-- I do not believe they are as serious as you portray, because this - this is not, this is not a problem as isolated to just one surgeon at Bundaberg Base Hospital being Dr Patel, this is a type of situation that has been written about long and hard in the medical literature and is known in other hospitals, be it in Queensland or in the rest of Australia, so I didn't see it as something that would - just was isolated to one individual practitioner in Queensland or Australia.

Well, perhaps it's best to suspend a few people rather than just one if that's the case?-- I think that that's one option, I think you will look at how we're going with health care, previously these mistakes were never talked about, never admitted, never discussed, they were never openly captured in any form, it's only now last probably since the mid 90s that there has been a change of thinking and we were trying to institute this adverse incident monitoring scheme as part of this total change in thought process, but it takes a very long period of time and it's one part of this clinical system.

You were asked by Mr Diehm where there was any trend that you discerned, that is, trend of complaints concerning Dr Patel; do you recall that question?-- Yes, I do.

In fact, your response to Mr Allen in evidence, I suggest to you, demonstrated - I'll start again. I suggest in response to Mr Allen, you said that there were a series of complaints which were reported to you over time but you didn't cobble them all together; isn't that so?-- Yes.

Now, you were asked some questions by the Commissioner about this as well?-- Yes.

The cumulative approach is as opposed to the individual approach?-- Yes.

When you received the Toni Hoffman complaint, either immediately or perhaps by the 5th of November after you'd interviewed these other doctors, did you as DMS give consideration to whether you should cobble together those complaints to examine them along with the other evidence in order to determine whether any preemptory action should be taken about Dr Patel?-- No, I didn't.

Why didn't you?-- As I said previously, Mr Leck was very much focussed on controlling and managing the situation and he was - I was responsive to his requests and his actions and he made it very clear that's what he wanted to do. If he wanted me to do something, he would have told me to go and do it. Now, in the day I was the Director of Medical Services, I was working to the District Manager. If it had been given to me in any way different form, yes, I would have done something different, but in the end of the day, I had to respect the position of the man I was working for.

It's another example of your management style, don't do anything until someone hits me over the head with it?-- No, I disagree with that, Mr Douglas. I think in my evidence here I was - showed that I was part of developing the adverse incident monitoring scheme from the bottom up working with the staff, getting out and educating them, trying to be proactive and trying to capture this type of information so that the organisation had a very clear idea of the totality of problems it was facing, we were out there trying to be proactive and preventative and educative in trying to do this.

And in the meantime, Dr Patel was always, again, to use a colloquialism, on your evidence, notwithstanding the progressive complaints, to be given the benefit of the doubt?-- I said yes, I was trying to be as fair and sure, yes, absolutely.

But not fair to the patients who he was operating on them?-- I believe I was trying to be fair to them as well. It's a very tough - it's very very tough and I was trying to be fair for all concerned and look, this Inquiry's shown that, you know, the way I did things at that stage were wrong, but at that time I honestly, I believed that I was doing the best I could with the information I had.

Can I take you to a different topic now? Do you recall the Visa application that you signed the covering letter for in late January, early February 2005?-- Yes.

I took you to that document yesterday?-- Yes.

That's the document, you will recall, which notes that the proposed period of employment was four years?-- Yes.

It was the sponsorship form for temporary residence in Australia for Dr Patel?-- Yes.

Sir, I can tell you that notwithstanding endeavours by my staff, we haven't yet been able to obtain the full document, including the execution page of that document?-- Mmm-hmm.

But when we retain it, we will provide it to your lawyers and it will be tendered, but to the best of your recollection, that is a document of a type which you had looked at before this particular occasion?-- Yes.

It was a document in a form that you had looked through on a previous occasion?-- Yes.

It was a document which was - of a type which as at January 2005, or prior to that, you ordinarily signed yourself?-- Yes.

On behalf of the hospital?-- Yes.

Did you read that sponsorship form prior to signing the covering letter?-- No, as I said, the covering letter comes to me and the other parts come to me and they're flagged with regards where my signature is required.

And you don't look through them?-- As I said, I deal with a large number of them, with a large number of them on a regular basis and no, I don't.

Do you think that is a proper method of discharging any obligations you have to the recipients of the document?-- I believe that I try to do the best I can taking into account the multiple demands of my time. In this situation there has been some wrong information provided and if - as I said yesterday, if I've made a mistake, I'm sorry that I made a mistake, but I believe that I'm trying to look at as much information as possible and this was just one of many administrative tasks and I didn't see it as anything out of the abnormal.

But all the facts pertaining to Dr Patel at the time you signed that covering letter, and perhaps the form itself, were fresh in your mind?-- There was facts about Dr Patel, yes.

The Hoffman complaint was fresh in your mind?-- That was in October, I can't say that it was - every detail of that was fresh in my mind at the time.

Your ruminations written down in early February 2005 was fresh in your mind?-- There was some of those, yes.

Your intended three or four month only job offer to Dr Patel was fresh in your mind?-- Yes.

The impending FitzGerald audit review was fresh in your mind?-- Yes.

Yet you didn't think it was a good idea to read the documents that you were signing off on to be forwarded to the Federal Government in respect of this same person who's the focus of all of those last few answers, Dr Patel?-- No, I didn't. I was - this was part of a process that we did for a large number of doctors on a regular basis and it was part of progressing to get through the process should, you know, should the Inquiry find that he was okay and/or, you know, he could take up further - his position, yes, we had it available to us, if we didn't do it, we were way behind the eight-ball, the timelag in this total process is extraordinary and if we don't have someone because they're not registered or they

don't have a Visa, the outcries are huge because it's deemed an administrative error. Now, we set out to try and make sure that his wishes were, as regards a four year Visa were agreed combined with taking into account what we knew at the time and, as I said, these, these forms are a regular occurrence because of the reliance on overseas-trained doctors. There was no intention to mislead them. As I said, I believe that you could have a contract for less than the period, the Visa period and if I've made that mistake because I'm not a migration agent, I'm sorry again.

As at late January, early February 2005, when you signed off on those Visa forms, you were still willing to accede to requests made by Patel, namely, in this instance, sponsorship for a four year Visa?-- Yes, he'd made that request prior and I, yes, I could see - I could see no reason because we had control over the situation.

You had control over the situation?-- Control over this Visa, if something happens with regards his Visa, with regards his employment status, his Visa could be cancelled.

And so long as he's down there working in the engine room churning through the elective surgery lists, you didn't particularly care?-- I reject that statement.

Now, my staff have located, since I examined you two days ago, an application for clinical privileges completed by Dr Patel; can I put a copy of this document in your hands? Have you been shown that document by your lawyers?-- Yes, quickly.

Thank you. The date of that on the second page is the 26th of June 2003?-- Yes.

Do you recall receiving or seeing this document sometime when Patel was working at the hospital?-- I don't specifically remember receiving it or reviewing it, but I know that I reviewed all of the information that we had at a certain stage in late 2003 as regards credentialing and clinical privileges and I went through and made notes about what further information was required and gave that to one of the administrative staff that worked for me and then that was produced.

I want you to assume that this document has made its way to a hypothetical credentialing and privileging committee meeting or process sometime whilst Patel was still at Bundaberg Hospital; can you just assume that for the moment?-- Yes.

We know the assumption is in fact factually incorrect because he left and before that time no credentialing or privileging had taken place?-- Yes.

But remaining with the assumption, is it your expectation that when it came to credentialing and privileging of Dr Patel, the committee in question, and in particular, the surgeon engaged in the process, would be in a position to take advantage of the fact that Patel had been working at the hospital up until

any point of notional consideration and that that committee would have been able to have regard to his performance in various spheres of surgery that he had in fact undertaken?-- Yes.

It would be a sensible course and a course you would expect would be adopted by a reasonable credentialing and privileging committee for them to make inquiries about how Dr Patel in this hypothetical or notional circumstance had faired in undertaking various types of surgery, either complex or simple?-- Yes.

And again, acting reasonably, such a committee no doubt would be asked for any documentation that had been raised within the hospital, that is, internally to the hospital, with respect to any virtues or vices in the manner in which he had gone about his surgical tasks?-- That's one option they can - they could do.

It would be a sensible option to adopt, wouldn't it?-- It's a sensible option but I'm not sure - it's this clinical privileging process continues to evolve and that's, I think ideal at the moment, I think there are some hospitals and health services that are doing that but it continues to evolve to get that information, yes.

It's an immediate source of information in the sense that as opposed to a circumstance where someone is credentialed and privileged, say, immediately prior to starting work, or a person has been on the job at the particular place for some time?-- Yes.

There's a ready source of anecdotal and documentary evidence available to the Credentialing and Privileging Committee?-- Yes.

In order to assess whether or not a credentialing and privileging should ensue in respect of that applicant?-- Yes.

We've heard, haven't we, that there was a body of evidence built up over time commencing in May 2003 which was in fact deleterious or critical of Dr Patel's surgical judgment and skill?-- There was, yes, there was concerns raised about him, yes.

And in fact, to be fair to you, you say that there were a succession of complaints which you never came to put together in that regard?-- Yes.

But they were raised in documents nonetheless?-- Yes.

And you would expect that, say, in a notional credentialing and privileging that perhaps took place, say, in February or March of 2004, about a year prior to Patel leaving Bundaberg, that that sort of documentation in that circumstance would have been available to the Credentialing and Privileging Committee?-- Yes.

And they could have put it together for the critical process of credentialing and privileging?-- Yes.

But we know, as you've acknowledged earlier, that that didn't occur because credentialing and privileging at least of surgeons never took place whilst Patel was at the hospital?-- Yes.

In the hypothetical circumstance that I've asked you to consider through the benefit of your position as the Director of Medical Services at Bundaberg, I suggest to you that that process with that source of information would have had an amplified ability to detect that Patel was a less than satisfactory surgeon?-- I don't believe they necessarily would have been - come down to the accuracy or fidelity of something that's been done, that's been presented at this Commission or the former Commission by Dr Woodruff and certainly the information that would have been provided to them was the similar information that we were receiving and was being reviewed on a monthly basis at the Executive Council meeting or at the clinical indicators and/or the wound dehiscence reports. They were part of - they were part of the system but they weren't ideally focussed on the individual and that we would need to change our measuring system or our measuring - performance measuring system to - really try to identify and look at each individual person.

I suggest you make my point, because I suggest to you in the process you've just essayed for the Commissioner, they involve looking at the hospital and looking at the staff as a whole?-- Yes.

Clinical credentialing and privileging focuses on the individual?-- Yes.

It's meant to focus on the individual?-- Yes.

And if it focuses on the individual, drawing from those other sources there is a heightened ability to discern from that available evidence the fact that a particular individual ought not be fully or wholly credentialed in particular areas, I suggest?-- I would - that's, I would believe that's a point I believe that's ideal, Mr Douglas, and I would not disagree with that. Our ability to do that at that time was not developed to that extent.

I agree with you, but the credentialing and privileging process wasn't developed to that extent either?-- True.

It was meant to be?-- Yes.

And I suggested to you a day or so ago that if you had canvassed the services, whether from Fraser Coast or Bundaberg of a local private surgeon to assist you, it would have been embarked upon earlier?-- As I said, that was one possibility, but I was unhappy about the fact that we would have a situation where potentially mates were credentialing mates and/or we had used one local specialist who was not agreed by

the College for one group of specialists and the other specialties didn't have that, and unfortunately, they want to have even playing fields as with regards how those rules are applied to them because credentialing and privileging, if it's taken to its maximum end point, it remains concerning for individual practitioners, and rightly so, but it remains very scary for them and they want to make sure that it's being done in a fair and reasonable manner and that if you have the external input, it helps reduce their anxiety.

You never, you said, telephoned the central zone or spoke to anyone from the central zone or from Charlotte Street here in Brisbane?-- That's right.

To assist you in that process?-- That's right.

And it went on for about really, bordering on two years after you got there, until you left, that is, until you went on leave in April this year, two years after you commenced work, is it the case that no surgeon had ever been credentialed or privileged at Bundaberg Hospital?-- Yes.

COMMISSIONER: Are you tendering that document, Mr Douglas?

MR DOUGLAS: Yes, I tender it.

ADMITTED AND MARKED "EXHIBIT 455"

COMMISSIONER: And how much longer do you think you'll be?

MR DOUGLAS: I think really I've finished. I'll just check my notes, if I may?

MR DIEHM: Commissioner, just whilst Mr Douglas is looking at that, my solicitor tells me there's potential for some concern about whether the pages that are in what Mr Douglas is about to exhibit are precisely right. Rather than wasting the Commission's time, I wonder, certainly it can be received as an exhibit but if I may speak to Mr Douglas, we'll try and make sure that we'll agree that it's the right document.

MR DOUGLAS: Yes, and I will do that and I have finished, thank you, Commissioner, thank you, Dr Keating.

COMMISSIONER: Do you have any questions arising out of that?

MR DIEHM: No, thank you.

MR DOUGLAS: May Dr Keating be excused?

COMMISSIONER: Yes, thank you Dr Keating, you're excused.

WITNESS EXCUSED

COMMISSIONER: And we'll adjourn until 2 o'clock.

THE COMMISSION ADJOURNED AT 1.05 P.M. TILL 2.00 P.M.

THE COMMISSION RESUMED AT 2.00 P.M.

COMMISSIONER: Yes, Mr Andrews?

MR ANDREWS: Good afternoon, Commissioner. The next witness is Mr Michael Allsopp.

COMMISSIONER: Yes.

MR ANDREWS: Who is currently in Aceh and needs to give evidence by satellite phone.

COMMISSIONER: Yes.

MR ANDREWS: Mr Allsopp has been forwarded by email yesterday a list of questions from me, in my pessimistic belief that communication by satellite phone is problematic. I have emailed all of the parties with a copy of that list of questions and its annexures.

COMMISSIONER: Yes.

MR FARR: I appear on his behalf.

MICHAEL ALLSOPP, VIA SATELLITE, EXAMINED:

MR ANDREWS: Good afternoon, Mr Allsopp. My name is David Andrews. Can you hear me?-- Yes, I do - I can.

I am very pleased at the clear connection. Is it often like this?-- Very hard to get a line in to Bande Aceh but we've got one.

Mr Allsopp, did you receive an email from me yesterday afternoon setting out a list of questions?-- Yes, I did.

Thank you. Well, can you tell me, are you Michael Allsopp, the District Manager of the Fraser Coast Health District?-- I am Mike Allsopp. I am no longer the District Manager of Fraser Coast. I relinquished that position in early September.

Mr Allsopp, I would like to begin by having you formally sworn?-- Yes.

WITNESS AFFIRMED

MR ANDREWS: Mr Allsopp, your 29 page statement, signed on 27 July 2005, containing paragraphs 1.1 to 5.12, is it true and correct to the best of your knowledge?-- Yes, it is, with the exception of the paragraph 1.1 where I state that I am the district manager.

Thank you. Are the opinions expressed in it honestly held by you?-- Yes, they are.

Do you wish to make any corrections or additions?-- No, I don't.

Do you have with you the email marked TMH21?-- Yes, I do.

Did you receive that email on about the 17th of June 2004?-- Yes, I did.

What orthopaedic issues had been brought to your attention prior to 17 June 2004 by Dale Erwin-Jones?-- Dale advised me of a number of issues, cancellation rates for orthopaedic department surgery and the effect that had on activity targets and patients.

I gather that the cancellation rates were high?-- The cancellation rates were of a concern due to a number of factors.

What factors were they due to?-- They were due to factors of the illness of Dr Naidoo primarily, and also the cancellations due to skin breakages making patients unsuitable to surgery.

Thank you. With respect to the first of those two, you speak of the performance of Dr Naidoo. Can you explain?-- I am sorry, I didn't hear that question.

You say that one cause of cancellations was the performance of Dr Naidoo?-- It wasn't the performance of Dr Naidoo, it was the illness of Dr Naidoo.

Thank you. Did that - do you mean by that that he was absent on-----?-- On occasions it caused cancellations of booked surgery.

And were they occasions caused by single days of illness or occasions caused by long periods of illness?-- I understand that they were caused by sick days of illness.

And the - did you discuss that issue with anyone, in particular Dr Naidoo?-- I discussed that with the Director of Medical Services in concern - with regard to the condition of Dr Naidoo.

Over what period of time had the issue of Dr Naidoo's cancellations due to sick leave been an issue for you?-- Well, it was raised by Dale on a couple of occasions, particularly with regard to the rescheduling.

As I understand it, Dale Erwin did not commence at the Hervey Bay Hospital until early in 2004. Does that accord with your recollection?-- That would be correct.

Do you mean that you had no discussions relating to Dr Naidoo's absences prior to Dale Erwin raising them with you?-- Not that I can recall.

And the second reason for cancellation of surgeries, you - as I recall you said it was caused by skin breakages?-- The skin breakages where patients had been booked for surgery and that the - identified when they came to surgery they had a skin break and therefore surgery would not occur.

Is that a cause independent of the staff of the orthopaedic department?-- That's correct.

Apart from cancellations, what other orthopaedic issues were brought?-- She talked to me about distribution of cases and lists between the roles of Hervey Bay and Maryborough hospital, as to what the two roles at the hospital were, in particular with regard to orthopaedics. Other issues were the allocation of private lists, the allocation of elective and emergency operating theatre lists, throughput, in cases - the number of cases that went through sessions, and the cost of prosthetics and the need to standardise those, and also the utilisation of emergency weekend time by surgeons to undertake elective work.

What was the issue relating to the allocation of work between the two hospitals?-- The issue was that so that Maryborough could do more elective work to reduce our waiting lists and Hervey Bay be the centre for emergency work, and the need to actually allocate lists and doctors to work on both sides.

Did anyone aside from Dale Erwin-Jones raise with you issues to be dealt with in the orthopaedic department at Hervey Bay?-- In terms - the only other one was with regard to the other email that she sent me that related to Theresa Winston.

What did you do in respect of Theresa Winston's email?-- My recollection for both of the e-mails is that I indicated to both the nurses that their concerns in relation to the process and ward management issues should be raised at the Surgical Services Management Advisory Committee for consideration and resolution there. Both of those nurses are members of that committee. My recollection is that I also advised these nurses that the heparin issues would be followed-up and I would discuss these with Dr Hanelt, Director of Medical Services. However, I cannot specifically recall as to whether I did initiate discussion with Dr Hanelt in relation to those concerns. I also noted that Dr Hanelt also received a copy of the e-mails and that the orthopaedic staff mentioned were in his area of risk management responsibility. Accordingly he was aware of the situation. My expectation was that he would manage that issue and if there were issues that required my intervention, that he would discuss these with me. I do not recall any discussion with Dr Hanelt on these e-mails. Also,

I do not recall any further follow-up email from these nursing staff indicating that the issues that they raised had not been satisfactorily addressed.

Are your duties as a district manager - I bear in mind that you have no clinical skills - that's correct, is it not?-- I have no clinical skills.

Your duties as a district manager, were they such that you should have followed up with Dr Hanelt, or was it appropriate for you to leave these email issues with Dr Hanelt?-- I - in terms of following up with Dr Hanelt, yes, it would have been appropriate that I follow up with Dr Hanelt. However, he was aware of the issues and he knew that if they required my intervention, that he would follow up with me.

Had Dr Hanelt never brought to your attention - had Dr Hanelt never before brought to your attention that there were personality issues between the Director of Medical Services and - I beg your pardon, the Director of Orthopaedics and the two SMOs?-- No, he had not.

Is that something he should have brought to your attention?-- Not necessarily. If they were concerns that required my intervention, yes, but it was within his area of management and also his area of expertise to be able to resolve those issues.

When Theresa Winston's email alerted you that matters were affecting patient care, is that a matter which you, as a district manager, ought to have been personally concerned with?-- Yes, it is.

In hindsight, can you say if, for instance, you were advising another district manager, would you advise them to contact Dr Hanelt and to discuss it personally?-- It would depend - it would depend on the issue and it would depend on how it interfered with patient care. Now, in terms of the issues that were raised, there were procedural issues for which the nursing unit manager had a certain range of options in terms of the management advisory committee to resolve, right, in terms of process and management of the ward. In terms of the interpersonal issues, I don't believe that the - I don't believe that my intervention with Dr Hanelt would have assisted, given that he was aware of the situation.

I am interested in the hypothetical question now?-- Sorry.

Of whether if you were advising a district manager, you'd advise them to contact Dr Hanelt personally or whether you would advise them to leave it to Dr Hanelt without making contact?-- Hypothetically I would advise to contact Dr Hanelt, but I am also aware of how Dr Hanelt works and I am acutely aware that he would take that on board, what was on the email and try to resolve that issue.

You and Dr Hanelt, how often did you converse?-- I would say every day that we were both there.

Do you mean to say Dr Hanelt had never before brought to your attention the concern that Dr Naidoo, for one reason or another, was taking long periods of leave?-- No, not long periods of leave, no. In terms of - with regard to Dr Naidoo's leave, I actually went to Dr Hanelt with regard to that and I was assured that the leave was approved within his award entitlements and his sick leave was genuine as a result of the sickness, an illness that could recur at short notice and had short times off as well.

Did you bring it to his attention because you were concerned about patient safety affected by the periods of leave?-- In terms of cancellations in particular. I wasn't aware there were patient safety issues per se resulting from his illness.

Did you discuss with him, that is with Dr Hanelt, the SMOs working in the orthopaedic department?-- No, I didn't. In what terms? In terms of the interaction between Dr Naidoo and those senior medical officers? No, I did not.

In terms of their performance?-- No, I did not.

Did you discuss the question with him of whether they were performing elective surgery?-- I knew they were performing elective surgery. I didn't discuss that particular issue with him, other than, I suppose, that the elective surgery that they performed was within their scope of practice.

When did you have that discussion?-- I can't recall specifically a date when we had that discussion but in terms of when they actually commenced duty, it was as to what duties they would actually perform and their scope of work.

And what information did you receive about the duties they would perform and their scope of work?-- That they had scope of work that required that they - some that they could perform independently, and their scope of work required supervision, and there was scope of work that they would not perform. The specifics of what changes were dealt with there and what that - the intricacies of what particular operations, I did not go into other than the principle that there was a scope of work that required that they could act independently, scope of work where they required supervision and a scope of work where they would not do that work.

I wonder if you could be mistaken about that? The reason I ask this is because the evidence seems to be that Dr Hanelt asked for the first time about their scope of work in about January 1994 and he asked Dr Naidoo to tell him about these things. Now, that's the state of the evidence?-- That is with regard to a documented scope of work?

The request seems to have resulted in the supply of a documented scope of work, yes?-- That's correct, but they were operating prior to that time and my understanding was that they were the criteria under which they operated.

Thank you. My interest is in asking you whether you could be mistaken about the time when you discussed with Dr Hanelt their scope of work?-- As I say, at the commencement of their employment, so that I understood what they were actually doing in the hospital.

Did you become aware that by the end of 2003 there was interest shown in the orthopaedic department by the Australian Orthopaedic Association?-- Yes, I was aware of that.

You'd have no doubt discussed it with Dr Hanelt?-- Yes, I did.

You'd have no doubt surmised that it was probably as a result of complaints by Dr Sean Mullen?-- That's correct.

And you no doubt would have discussed with Dr Hanelt what it was that Dr Mullen was concerned about?-- The concern, as I understood from Dr Mullen, was that we were holding out the senior medical officers to actually be orthopaedic surgeons.

And you fixed - you quickly addressed that problem, didn't you, and assured it didn't happen again?-- In terms of my knowledge that they weren't accredited specialists, yes, I was aware of that.

Didn't Dr Hanelt tell you also that Dr Mullen was concerned that Dr Naidoo wasn't about - that is wasn't around - often enough to supervise the two senior medical officers?-- No, I don't believe - believe that was the case. The - the issue was - in terms of the supervision was not clear and what the result was as to whether in fact they were adequately supervised or whether what was the interpretation of supervision, right, there was, as I understand it, some disagreement between Dr Hanelt - Dr Naidoo and Dr Mullen and it is on that basis that Dr Hanelt indicated that we would get an external review to actually clarify what the supervision requirements were.

Thank you?-- And their adequacy.

Mr Allsopp, does that mean you understood that Dr Mullen thought that there should be more supervision but that Dr Naidoo thought that the supervision was adequate?-- I don't think we went to that specific. I think that we looked at - or discussed that the supervision requirement was not clear.

Well, surely you understood that there should have been a debate about the appropriate level of supervision?-- What I am saying is that I didn't go into the specifics of what the differences were in terms of what Dr Naidoo was saying and what Dr Mullen was saying. I do not have the clinical skills to actually deal with those differences, right, and therefore I think that that's why we didn't discuss that, other than the fact that we would need an external reviewer to determine what is appropriate with regard to the supervision requirements for the SMOs so that we could actually meet, I suppose, some

external standard with regard to what we provided, or independent standard.

Did you understand that the difference of opinion between them was premised upon Dr Mullen being dissatisfied with the level of supervision?-- As I said, the issue was that in terms of - well, not with regard to being dissatisfied. I think it was with regard to what is clear as to what is the level of supervision required.

Did you understand that it was Dr Mullen who was complaining and not Dr Naidoo?-- I am sorry, I missed that question.

Did you understand it was Dr Mullen complaining, not Dr Naidoo?-- I understood that there was disagreement between - between the two of them in terms of what level of supervision was required, and also in terms of Dr Hanelt not being sure as a result of that disagreement and that's why it went to seek a review from the AOA.

Did you inquire of anyone whether it was a disagreement that affected patient safety?-- No, I did not.

Did you know that it was a disagreement that affected patient safety?-- No, I did not.

Should a district manager ask whether such a disagreement affects patient safety?-- That is a reasonable question and I think that the answer would be that if it was a patient safety issue, right, it would have been raised with me as a patient safety issue rather than, I suppose, me asking the question, but it is a legitimate question.

COMMISSIONER: So what's the answer?-- Well, the answer is yes, maybe I should have asked as to whether in fact it affected patient safety. What I am saying is if one considered it didn't and the other considered it did, right, I was not in a clinical position with regard to making that assessment and that is why we went to the AOA.

MR FARR: I understood his answer to mean that the question itself, whether a district manager should ask does this affect safety question is the reasonable question rather than my learned friend being a reasonable question. That may need to be clarified.

COMMISSIONER: He answered me anyway.

MR ANDREWS: Mr Allsopp, were you aware that Queensland Health published a credentials and clinical privileges document that contained guidelines for medical practitioners and-----?-- Yes.

-----they'd done it in about July 2002?-- Yes.

Were you aware that under that guideline there was supposed to be a credentials and clinical privileges committee comprised of medical practitioners?-- That's correct. Yes, I was

aware.

And were you aware that you were to decide on the categories of the variable membership of that committee?-- Yes.

Were you aware that you were responsible, as district manager, for ensuring that a process was in place to enable credentialing and privileging to occur?-- That's correct.

And you knew you had power to grant temporary privileges?-- Yes, and that there was also provision to delegate this power to the medical superintendent.

Did you delegate?-- Yes.

When?-- In terms of the management of the implementation of the clinical and - sorry, the clinical privileges policy or the credentials and clinical privileges policy, that they were handed - assigned that to the Director of Medical Services to implement.

When?-- When I became aware that the policy had to be implemented, and I am not sure of that date.

Can you tell me what year?-- I think it was probably in about 2002.

Do you mean it is Dr Hanelt who has been derelict in the duty to set up a credentials and privileges committee during 2002?-- No, I don't consider for him to be derelict at all. Dr Hanelt had a large workload, the process was - did not have a time-frame establishment - established to it with regard to when a clinical privileges committee had to be established.

Wasn't it obvious from the document that every medical officer employed at the - in the Fraser Coast Health Service District had to be privileged by this committee?-- That's correct.

And that every new employee was expected to be privileged before their employment commenced?-- That's correct.

Well, then it would be appropriate to say that someone failed to do - to perform-----?-- Temporary - temporary approval, right, or credentialing could have been given by the medical superintendent pending the formation of the clinical privileges committee.

But you know well, don't you, that Dr Hanelt wasn't according temporary privileges to anybody?-- He was - he would have gone through their application with regard to their clinical ability-----

Do you know this?-- -----the referees' report, the selection committee report to determine the appropriateness of the allocation of their clinical privileges.

Mr Allsopp, thank you for that. You began that sentence by saying, "He would have gone through these documents", but do you know what Dr Hanelt did or did not do?-- Sorry, I missed that question.

Do you know what Dr Hanelt did or-----?-- No, I don't in particular, other than the signing of the forms that they were temporarily accredited or clinical privileged.

Did you see any forms signed by Dr Hanelt to suggest that any medical officer was temporarily privileged? The reason I ask that is I understood from Dr Hanelt's evidence that there was not even temporary privileging, at least until late 2004?-- Right.

But I-----?-- Well, in that - if that's the case, I would go with what Dr Hanelt says in terms of that, but I - my understanding was that once the policy came in, right, that the temporary clinical privileging occurred when people were appointed, right, and when we received the applications from the medical staff that there was temporary medical - temporary clinical privileging given until such time as the establishment of the formal credentialing committee. Do I recall the forms? No, I don't.

Thank you. And you don't recall when you had this discussion about temporary privileging?-- It came with - with the implementation of the - of the policy, that that was part of the policy pending the implementation of the clinical privileges committee, that there would be the allocation of temporary clinical privileges.

Well, from July 2002, for the remaining five or six months of that year, how many times did you pursue Dr Hanelt to ask, "When is the committee going to be established?"?-- I can't say how many times, or if I did in that time.

It's likely that you didn't pursue him even one time, wouldn't you agree?-- No, I would not agree with that. I would actually - I would disagree with that. In terms of - on occasion I would ask the question as to where we were at with clinical privileging and he would give me a response with regard to either the discussion with Bundaberg in terms of establishing the joint committee, in terms of the difficulties, in terms of getting a representative if available.

Mr Allsopp-----?-- It was on an agenda and it was also discussed in our annual performance review as an item that had to be - had to be addressed. I haven't got a date for when that actual review was.

How many years did it take for a committee to be established?-- I think it was probably about three years.

That was-----?-- Two to three years.

That was too long?-- In hindsight, yes, I agree it was too long. In terms of the - of a couple of things, to the workload required to do that and - and I suppose the priority of work that was being undertaken by Dr Hanelt, it was one of those things that actually went and that I accepted went that wasn't undertaken.

And would you agree that according to the guideline you really ought to have established a committee within 2002?-- Well, I'm not sure that the guidelines actually had a timeframe. I think that the guidelines recognised that there would be difficulties both within the workload and also logistics in getting those committees together.

Well, even if one accepts that the guidelines might have implied that there'd be difficulties, I'm asking whether you agree it ought to have happened in 2002?-- In an ideal world, yes.

And you'd agree that under the guideline, it was - the responsibility began with you?-- That's correct.

Do you have that newspaper article which is an annexure-----?-- Yes, I do.

-----to your statement? Did you inform a journalist that an orthopaedic surgeon had been recruited and another was due to start?-- Yes, I did.

And do you agree that in Australia the term "other surgeon" is a term of art that doesn't apply to doctors with the qualifications of Drs Krishna and Sharma?-- Yes, I would agree with that.

And do you agree that when talking to the journalist, you were seeking to describe Drs Krishna and Sharma-----?-- I didn't actually mean - mention their names and their names didn't

appear in the article, right, but in terms of - I was meaning that the - those - we were having additional doctors come to work in orthopaedics, right, to reduce our waiting list.

Did you say you were meaning you were having "traditional"? What was -----?-- Orthopaedic doctors, doctors with orthopaedic experience.

I see. In fact, Dr Hanelt advised you that there may have been legislation that prohibited the use of the expression "orthopaedic surgeon"?-- That's correct, after it appeared, and I was very conscious thereafter to make sure that I didn't portray - portray that account, and I then - from recollection I don't think anything come out after that, but also in reading the AOA report, that's also not clear there, they refer to accredited and nonaccredited, right, orthopaedic surgeons. They mention specialist orthopaedic surgeons, they - and the words "specialist" and "consultant" were not words that I used in that article. I did not portray them to be specialists.

Thank you. I see at paragraph 4.62 of your statement you suggest that patients being attended by SMOs who aren't orthopaedic specialists should be informed that they're not orthopaedic surgeons?-- That's correct.

Was there any protocol at the Hervey Bay Hospital for informing patients that the SMOs were not orthopaedic specialists?-- No, there wasn't.

Has-----?-- It was subsequent to the publication of the AOA report that I - I considered options to ensure that patients presenting at an orthopaedic clinic were aware of the professional status of the clinicians they were seeing, and I considered that to - if you implemented such a protocol, it would remove the ambiguity and also assist in the process of informed consent for those patients. But it wasn't implemented.

Did you say it was not implemented?-- It was not implemented because I had not been there since that time, and also the orthopaedic services too.

Is that something you'd recommend if the service is recommenced?-- Yes, I would. I think that would remove that ambiguity. I know that in some ways registrars explain that to patients probably when they see them in a specialist clinic as to what their role is so that the patient has an understanding of what the - the role and the professional status is of the - of the doctors they are seeing.

Did you make inquiries as to whether Drs Krishna or Sharma had been instructed about that sensible practice that registrars used?-- No, I don't.

So you haven't asked whether they were in fact informing people that they were not?-- No, I haven't. I considered that in isolation.

Paragraph 4.66 of your statement relates to a particular incident. Do you recall it?-- Yes, I do.

Can you say why you failed to make contact with Dr Mullen before you told the Nurse Unit Manager to cancel the surgery?-- Well, there were two - well, why I didn't contact Dr Mullen?

Yes?-- Because there were two issues presented. One was that it was elective surgery being done in emergency time and also that the Senior Medical Officer for Anaesthetics had ruled that the patient was unfit for surgery. It was on that basis that I advised her that I reinforced the decision that they'd made. I confirmed that decision and subsequently Dr Mullen actually contacted me.

Why didn't you contact Dr Mullen?-- Why didn't I contact Dr Mullen? Well, I suppose that if I knew that if he had an issue with - and wanted to pursue the case, that he would contact me.

In hindsight or - yes, in hindsight, is it appropriate for a District Manager when cancelling an orthopaedic surgeon's surgery on the advice of a Nurse Unit Manager to contact the orthopaedic surgeon first to explain why the cancellation is to occur or to ask whether there are any reasons for-----?-- In hindsight, it was - it was a Saturday afternoon, it was - it was - the only reason I was in contact with the Director of Medical Services was - not contacted - in hindsight, I think it goes either way. If he wished - if he was just putting - putting a case on that he wanted - wanted a case to see whether he could do a case in elective surgery, elective surgery in emergency surgery time, he would accept that decision, right, particularly given his Senior Medical Officer had ruled the patient unfit.

Do you mean-----?-- I don't think it's unreasonable that he would contact me after that.

Yes, but my question is whether in hindsight you should or a District Manager should contact the orthopaedic surgeon before the District Manager with no clinical training cancels the surgery?-- In hindsight, yes.

Now, within the AOA report there were suggestions of some ill will between administrators and clinical staff?-- Can we just go back? I didn't actually cancel it. I didn't say it could go ahead because it wasn't booked.

Would it be fair to conclude that the advice you gave to the Nurse Unit Manager-----?-- Would prevent the booking of that patient, yes.

Yes. Thank you. Within the AOA report there are some suggestions that in the Fraser Coast area and at the Hervey Bay Hospital there were some tensions between clinicians and administrators. Would you agree that there

were?-- No, not at all. I - I - I was not aware of any tension between administrators in terms of Dr Mullen. I think I have talked to Dr Mullen twice in my time there. Once was when I was introduced to him when I first commenced there, and the second was on that - on that Saturday afternoon. I don't believe that there was - there was tension between administration and the medical staff. I had - you know, the issue was to whether there was animosity. I had no animosity towards Dr Mullen or any other doctors. I treat them with great respect in the work that they do.

Thank you. That particular decision of yours, which had the result of preventing the Saturday surgery-----?-- Yep.

-----doesn't that indicate a lack of respect by you, at least on that day, for Dr Mullen's request?-- No, not at all. As I say, I expected if Dr Mullen was not - was not happy with that that he would contact me to discuss that objectively as to why he - he wanted to run the case, given the objective things that I had which was that a Senior Medical Officer had ruled that the patient was unfit for surgery and it was cutting into - it was to take emergency time when emergency time is allocated for real emergencies. So, what I was doing was policing a policy, not necessarily cancelling his work.

At paragraph 4.44 of your statement you say that you were - you were aware of several tensions between orthopaedic medical staff. What were the tensions you were aware of and-----?-- I was aware there was tension between Dr Mullen and Dr Naidoo and particularly with regard to their sharing or the - I suppose the sharing of the workload on call and also the difficulty that Dr Naidoo was having in getting Sean to agree to certain dates with regard to on-call activities. So I believe there was some tensions there, and as you indicated earlier, I was aware from Theresa Winston's e-mail that there was tension between Krishna, Sharma and Dr Naidoo.

Were you aware there was a safety issue involved in Dr Naidoo's absences on leave?-- No, I was not aware of that.

You were aware that the two SMOs didn't hold Australian orthopaedic qualifications?-- That's correct.

And you were aware at least from the time Dr Hanelt spoke to you about the newspaper article that one in Australia couldn't call them orthopaedic surgeons?-- That's correct.

And you'd have been aware that the standards of their - the training of Drs Krishna and Sharma were not regarded by the Australian medical community as being so good as the standards of an orthopaedic surgeon?-- If we go back to where you commenced the - the interview, the issue was whether, in fact, there was - there's a scope of practice for those doctors and the scope of practice was that - certain activities that they could do independently. There was a scope of practice for certain activities that they would require supervision and there was scope of practice what they wouldn't do. In terms of when Dr Naidoo was not there, that - the limit of their

scope of practice would be for those - those activities which didn't require supervision, and the other activities then would require referral to another institution or deferral to a time when there was supervision.

Did you know that no scope of practice was written down for Dr Krishna until January 2004?-- Yes, I - I indicated that earlier.

Did you know that-----?-- But I understand that there was an understanding as to what their scope of practice was.

COMMISSIONER: What did you think that understanding was?-- That they - there was certain procedures where they could do work in terms - independently, that they considered themselves competent in, and that they'd - was agreed that they had a competency in those skills or that - procedures to actually perform those without supervision.

What was your source of that information? Who told you that?-- The source of that information, I suppose, was with regard to the Director of Medical Services in terms of their appointment and the fact they were doing - they were doing elective surgery, right, and they were doing certain amounts of elective surgery without supervision and they were doing certain other works without - without supervision, and my understanding was that they would - and also from Dr Naidoo - that they had the clinical competence to actually perform certain work unsupervised.

Who told you that they could do certain work unsupervised?-- I can't be specific with that.

You have no recollection at all now?-- Whether it was either Dr Naidoo or Dr - Dr Hanelt?

Or if anyone told you that?-- Oh, no, I have been told - told that with regard to looking at their scope of practice and, as I say, at their initial appointment as to what was - their scope of practice was and what work that they would be doing in the hospital, and that included some emergency - emergency work and also some elective work.

MR ANDREWS: Do you agree that it's unsafe to leave the scope of practice for those unsupervised medical officers to an understanding and that it would have been much safer to have had it committed to writing?-- I would agree with that, and I think that once we - once we realised that, that's what - that's the action that we actually took to actually document it, so that we were aware of what that scope of practice was, both as the theatre staff and also the - for the individual.

COMMISSIONER: Once you realised what?-- In the terms of the - that there wasn't a documented scope of practice.

Didn't you know before-----?-- No, I didn't.

MR ANDREWS: You speak of "realising that there wasn't a

documented scope of practice". Do you remember when you realised that?-- I think - I think I realised it when the actual documented scope of practice turned up.

That's in about January 2004?-- January 2004.

Well, that was as a result of the interest of the Australian Orthopaedic Association, wasn't it, not as a result of any concerns of Dr Hanelt's?-- Well, I think that Dr Hanelt - the concerns raised by the Orthopaedic Association highlighted to Dr Hanelt that there needed to be written down a scope of practice and that's what he proceeded to do, or what he proceeded to get Dr Naidoo to do-----

Now-----?-- -----being the accredited orthopaedic surgeon.

Mr Allsopp, if you had either yourself created a credentialing and privileging committee in 2002 or if you'd insisted that Dr Hanelt would make that a higher priority so that one was created in 2002, would you have expected that there'd have been a written scope of practice created at an earlier time for these two SMOs?-- Yes, I would have.

You speak of the vision of Dr Mullen for the orthopaedic health care of the Fraser Coast?-- Yes.

And you speak in a couple of places in your statement of either sharing that vision or having a similar one. What was the vision you understood Dr Mullen to have?-- The vision of - Dr Mullen articulated in the report and that he revealed the vision that he had for orthopaedic health care for the Fraser Coast Health Service District was where three possibly four younger orthopaedic surgeons living in the region supplied orthopaedic health care to be both in public and in private. That was the articulated vision.

So, did you have any opinion about what the Inquiry's heard from Dr Mullen, that is, his view that the SMOs ought to have been much better supervised by Dr Naidoo, not just for patient safety, but so that they could learn in the process?-- Greater supervision does provide - obviously with regard to a great - well, I suppose, greater opportunity to improve safety and also the training of that - of those individuals. I think that that's - speaks for itself.

You had a strategic plan for the Fraser Coast orthopaedic department?-- In terms - in terms of our strategic plan actually for the whole - the whole health service was to actually have the numbers of specialists available so that we'd have a critical mass for all our specialities so that they could actually work a one in four. So-----

You-----?-- That was the aim.

You knew how difficult it was to recruit orthopaedic specialists to your health service district, didn't you? You knew how difficult it was to recruit orthopaedic specialists-----?-- That's correct.

Was it part of your strategic plan to use overseas trained doctors who had some orthopaedic experience to perform elective surgery and emergency surgery in the orthopaedic department because you couldn't get orthopaedic specialists?-- That's correct.

Now, you'd have understood that one was unlikely to be as good as the other?-- Well, if we had the strategic plan which had the supervision of the three or four orthopods, right.

Oh, yes. That would be ideal, wouldn't it?-- That's correct.

Now-----?-- But in the meantime, we had to continue to provide the service.

Now, my question a minute ago was you understood that one, namely the overseas trained doctors who did not have Australian recognised qualifications, were - was not likely - as likely to be - I beg your pardon, was not likely to be as good as the other; that is, an orthopaedic surgeon. You understood that Drs Sharma and Krishna were unlikely to be as good as other surgeons?-- In terms of providing the range of services provided by an accredited other surgeon, that is correct.

Did you appreciate that within Australia there are persons with orthopaedic experience who do not have the qualifications of an orthopaedic surgeon because they're, for instance, trainees or because they're content to have a career that does not involve obtaining specialist qualifications? You'd know that, wouldn't you?-- That's correct.

And you'd know that those persons are generally supervised when they perform orthopaedic work?-- That's correct.

Now, what plans did you have in mind for the supervision of Drs Sharma and Krishna when Dr Naidoo was away?-- Again, I go back to they would operate within their scope of practice, right, and there was - if this were things outside their scope of practice which they could not perform, then they would - those patients would go to a facility where those services would be provided.

COMMISSIONER: And who would ensure that that would occur?-- It goes back to the - to the surgeon to actually make the call in terms of what their approved scope of practice is.

So it was left to Drs Sharma and Krishna to decide whether they should perform an operation or not?-- In terms of their scope of practice and what their agreed scope of practice for unsupervised work and for supervised work that those patients would be referred out if the supervision was not provided or deferred until supervision was available.

MR ANDREWS: Do you agree, Mr Allsop, that everyone in the hospital, both clinicians and administrators, are aware that there are benefits to the hospital if more elective surgery is performed?-- There are benefits in terms of the community, in terms of to the hospital per se, in terms of yes, it allows us to build a critical mass of specialists and also support staff to actually, to grow according to the needs of our population.

And the clinicians themselves would be aware that it was expected of them to pull their weight to do as much elective surgery as possible, they'd be aware of that, wouldn't they?-- If terms of addressing the waiting lists of patients, yes.

COMMISSIONER: Well, they knew there was an economic benefit in-----?-- In terms of the elective surgery program.

Let me finish?-- Some elective surgery would attract funds equivalent to what the cost was, right, but it was certainly a supplement to allow us to actually grow the organisation and recruit staff.

Now, would you please listen to my question?-- Okay.

And wait until I finish before you answer it. There was an economic benefit in surgeons performing elective surgery because if your elective surgery target was not met, you would lose funds for the following year; isn't that correct?-- Not necessarily. If in the following year you could again bid for that money, depending upon the reasons as to why you did not achieve the elective surgery target in that year.

Unless you could prove that there were some very good reason, you would lose the money in the following year; that's correct, isn't it?-- No, each year was based on what you did, what you bid for in that year and what was approved in that year and that may be the case. If you could not justify as to why you were not able to achieve that target, right, and that you would not able to achieve it in that following year, there is a likelihood that you would lose that money.

Thank you.

MR ANDREWS: Do you agree that Drs Sharma and Krishna would have been motivated to do more elective surgery for the financial health of the hospital?-- No, I don't believe that is the case, I don't believe we put any pressure on people to do more elective surgery for the financial benefit of the

hospital. Certainly what we ask is that the resources that we have got that we use officially and that we treat as many patients as we can with those resources.

You speak about acceptable safety constraints?-- Yep.

When considering the strategy of employing overseas-trained doctors in the orthopaedic department, was that decision discussed with you?-- In terms of employing the overseas-trained doctors?

In the orthopaedic department?-- For the senior medical officers?

Yes?-- Yes, it was.

Were the safety issues discussed with you?-- To - the safety issues were not discussed with me. The issues with regard to their employment was that they would supplement our orthopaedic department in terms of workload, that they would be able to perform a certain range of elective surgery procedures and some emergency work within their scope that would allow the existing orthopaedic surgeons to actually concentrate on the hip and joint replacements which are basically specifically to specialists.

What expense is there for the hospital if trauma patients are stabilised and transferred?-- There is no expense to the hospital other than the stabilising of the patient in the emergency department or whenever, but there is no charge with regard to or cost to the hospital in transferring those patients out - unless we send an escort with them, that would be the only other charge I could think of.

Thank you. Did you attend a conference during 2005 at which you discussed with Dr FitzGerald - I'm talking about a central zone conference held at Maroochydore on the 18th of March 2005?-- 8th of?

18 March 2005?-- Right.

Did you attend a central zone conference at Maroochydore then?-- I think it was the zonal conference, yes.

Do you know Dr Gerald - Gerard FitzGerald?-- Yes, I did.

Do you recall having a discussion with Dr FitzGerald at that conference?-- Yes, I do.

Do you remember him discussing some significant health problems at a hospital?-- Significant? In terms of he had done a review of a patient that died in transit, yes.

I see. And that patient had been a patient-----?-- I'm sorry, I can't hear you.

At which hospital had that person been a patient?-- The patient was originally admitted to Maryborough Hospital, went

to Hervey Bay and then was flown to Nambour and died in transit.

So there were no problems from the Bundaberg Hospital that were discussed?-- Not that I can recall, no. It was only, there was not a formal meeting with Gerry, it was just a meeting say hello meeting and-----

Thank you?-- Discuss-----

Ms Erwin Jones, do you recall that in about March or April of 2004, she informed you that Drs Sharma and Krishna were not being supported by their Director of Orthopaedics, Dr Naidoo and that she had concerns about his lack of attendance at the hospital?-- Well, we talked, as I said, they were one of the issues that she covered in terms of him not being there and cancellations. In terms of the support for them by him, I do recall that she - that that had been raised.

And I'm suggesting it was raised as early as March or April 2004?-- It was raised, not in a formal sense, it was raised in a, you know, she was concerned that they weren't being supported, you know, there are other people in the hospital also raised concern, you know, that said people aren't being supported here or there but it wasn't in the context of this is causing a major problem.

And you understand hospital jargon better than I; what did you understand her to mean when she said that they weren't being supported by Dr Naidoo?-- Probably in terms of the aspect that you raised earlier with regard to that training and additional training that they would get if there was more supervision.

And did you care about that issue?-- Yes, I care about that issue, but-----

What did you do about it?-- I beg your pardon?

What did you do about it?-- What did I do about it? I didn't do anything about it. The - the - no, I did not do anything about that but it referred to the supervision and the additional training and the support that they get in that regard.

Should a district manager do something about an issue like that when it's raised?-- No, I disagree. I think that if there are concerns with regard to people wishing to say that somebody is not supported and they want action taken, then actually that needs to be documented. If there is incidents with regard to where they're not supported and it causes patient safety to be compromised and then an incident report goes in, and those things get dealt with in the formal channels of an organisation. In a day you would have a number of people talk to you about a whole range of things as a district manager and if you, if you were to take all of those on board you would not - you would cause great confusion and great disharmony within your organisation. So if there is an

organisation that people believe that need to be pursued, that there is a correct avenue or channel to actually be pursued.

Surely if you pursued every significant issue that was raised, you'd have a lot of work to do?-- No, it's not just a lot of work to do, it is - it would be interfering with regard to the management, right, of other areas of the hospital and you want your managers to actually manage their own areas. In terms of letting them know that there is a concern within their area and that you're aware of it, you do pass that on from time to time. I am not sure whether I passed on to Terry as to what was said to me so I'm not going to be - on that.

Well, do you agree that you ought to have passed it on to Terry when Ms Erwin Jones told you?-- As if we go back earlier as to whether in fact Terry was aware of those issues.

Do you agree you ought to have passed it on to him when Ms Erwin has told you-----

MR FARR: Well, he's answered the question, with respect, because he said he wasn't sure if the district manager was aware of those issues in the first place.

WITNESS: -----if I thought it was a minor issue, I would have passed it on to him.

COMMISSIONER: Well, he's answered it.

MR FARR: I think he has. I'll just stay in the chair.

MR ANDREWS: Mr Allsop, there'll be others who may have questions for you?-- Yes.

I have no further questions.

COMMISSIONER: Mr Mullins?

MR MULLINS: No.

COMMISSIONER: Mr Allen?

MR ALLEN: No.

MS McMILLAN: No.

COMMISSIONER: Mr McDougall?

CROSS-EXAMINATION:

MR McDOUGALL: Mr Allsop, my name's McDougall, I'm counsel representing Mr Hanelt at this Inquiry?-- Yes.

I've just got a couple of questions in relation to

credentialing and privileging that I'd like to ask you about?-- Mmm-hmm.

You were asked a number of questions as to the implementation of the 2002 Queensland Health policy-----?-- Mmm-hmm.

-----in relation to credentialing and privileging. Were you aware that Dr Hanelt had difficulties in implementing that policy because of the lack of specialist, independent specialist staff to sit on a credentialing and privileges committee?-- Yes, I am.

Were you aware that in 2003 he commenced a liaison with the Bundaberg Hospital and/or district, I'm not sure which, in order to set up a committee with them in order to overcome that shortcoming?-- That's correct.

Were you aware that the colleges, in particular, I think the Royal College of Surgeons and - Royal Australian College of Surgeons and the Australian Orthopaedic Association would not provide specialists to credential and privilege what they considered to be non-qualified, by that I mean non-orthopaedic surgeons?-- I wasn't - in terms of them nominating, yes, I was aware that there was difficulties with regard to getting nominations for them from the College of Surgeons. That specific reason wasn't - I wasn't aware of that.

I see. Were you aware that Dr Hanelt was the instigator of this liaison between your health service district and Bundaberg's with a view to endeavouring to implement Queensland Health's policy?-- That's correct.

Very well. Thank you.

COMMISSIONER: Thank you. Mr Diehm?

MR DIEHM: Commissioner, I have a couple of questions.

CROSS-EXAMINATION:

MR DIEHM: Mr Allsop, my name's Jeffrey Diehm and I appear for Dr Keating from the Bundaberg Health Service District. I have also just a couple of questions about this credentialing and privileging issue. You've said that you were aware that there was a problem in getting nominations from various colleges, in particular, the College of Surgeons for participation in the committees as required by the policy?-- That's correct.

Did you attend at a meeting organised by the Central Zone for, perhaps amongst other personnel, but certainly including the district managers from within the Central Zone in about November of 2004?-- I can't recall.

Perhaps if I can offer-----?-- Yep.

-----this possible primer to you: do you recall the tilt train accident that occurred near Bundaberg?-- That's correct, yes.

Do you recall being at a meeting of district managers?-- That's correct.

Of the Central Zone?-- That's correct, I was at that meeting.

All right, and Mr Leck had to leave that meeting because of the occurrence of the tilt train accident?-- That's correct.

Now, at that meeting, do you recall there being any discussion being raised by anybody within the Central Zone Unit Management about this particular problem of the lack of participation of the College and, in particular, the College of Surgeons in this process?-- I don't recall it being raised, but it was known within the district managers that there was difficulties getting representation from the College of Surgeons.

So that was something that was broadly known across Queensland Health district managers, is that right?-- Oh, within central zones, yes, I would say.

Was it something to your knowledge that was made known to Central Zone, to the managers within Central Zone?-- No, I can't say that.

All right. But you don't have any recollection of this being discussed at this meeting in November?-- No, not in detail, no.

Well, by that do you have even the vaguest inkling that it was discussed, and when I say "discussed", I'm not talking about a couple of district managers having cup of tea-----?-- Yes.

-----at a break, but being raised and spoken about by representatives of the Central Zone Management?-- I can't say for sure.

Mr Allsop, do you have any recollection, and I ask you this with respect to your last answer?-- Yes.

Do you have any recollection of being given a direction at that meeting that such a problem was to be overcome by going outside of the terms of the policy and appointing persons, surgeons or other specialists as appropriate to committees without the nomination of those doctors by the College?-- That was discussed. Now, I do recall that issue being raised as to - that as a possible option in terms of getting credentialing committees done.

All right. What did you do with that advice or information?-- In terms of going back to my district, I think that I pursued it with the Director of Medical Services, the option of actually trying to get a Dr O'Loughlin, right, from Royal Brisbane or similar, right, to sit on our committee.

Thank you. You don't know what the outcome of that was?-- No, I don't.

Thank you, Mr Allsop. Thank you Commissioner.

COMMISSIONER: Mr Farr?

MR FARR: Thank you, Commissioner.

RE-EXAMINATION:

MR FARR: Mr Allsop, it's Brad Farr speaking, there's just a couple of questions I wanted to ask you?-- Yes Brad.

If a patient safety issue arose within a hospital?-- Yep.

Would a district manager, do you think, expect that it should be brought to his or her attention if those below in the chain of command, the district manager, were unable to deal with that issue?-- Yes, I would.

Would a district manager in that circumstance expect it to be bought to, do you think, to his or her attention if those below were in fact able to deal with that issue and correct whatever the issue?-- I'm sorry, I lost that in the line.

Would you think as a district manager that one would expect to receive notification of such an issue if in fact those below are able to address it and correct it?-- Yes, I would.

So the district manager should be informed of the issue, whatever it might be, whether it can be and in fact has been corrected below or whether, or whether those below cannot fix it?-- I'm sorry, I can't hear that, missed that whole question?

I'll ask it again. Can you hear me all right?-- I can just hear you.

How's that? Is that any better?-- That's a bit better.

All right. The second part of my question, and I'll just repeat the full question to ensure that you've understood it. You told us that if those below a district manager can't fix the problem that might deal with patient safety issues, then the issues should be brought to the attention of the district manager?-- There is a formal governance process with regard to patient safety issues. If there is an issue of patient safety, that issue gets dealt with in terms of a critical incident, right, so that it can actually be dealt with within the formal channel of the organisation. If it's a clinical issue, that is dealt with by the clinical advisory group for that particular specialty, right, and they make

recommendations in terms of an outcome to the district executive to take action. Now, does that answer your question?

The second part to my question is this: if it's an issue that's able to be corrected by those working at the hospital at a level lower than the district manager?-- Yep.

Is it the case that the issue should still be brought to the district manager's attention?-- Not necessarily. It's bought to the district manager's attention if the intervention of the district manager is required to actually resolve that issue.

I see?-- And it is - and if it is considered that the district manager has the skills, particularly when you're dealing with a clinical issue, to actually address that issue.

All right. Does that therefore mean that a district manager must place reliance upon the skills, the expertise, the knowledge, the initiative of those in the chain of command below him or her?-- That's correct.

And does the reliance upon such things in your opinion accord with proper management practices for a hospital district?-- That's correct.

Yes, thank you, that's all I have.

COMMISSIONER: Mr Andrews, did you intend to tender Mr Allsop's statement?

MR ANDREWS: Yes, Commissioner, thank you for reminding me.

COMMISSIONER: It will be Exhibit 456.

ADMITTED AND MARKED "EXHIBIT 456"

COMMISSIONER: Do you have any questions?

MR ANDREWS: No further questions, thank you, Commissioner.

COMMISSIONER: Thank you Mr Allsop, you're excused now?-- Thank you Mr Commissioner.

WITNESS EXCUSED

COMMISSIONER: We'll now adjourn-----

MR ANDREWS: Commissioner-----

MR McDOUGALL: Commissioner, could I raise a couple of issues?

COMMISSIONER: Certainly.

MR McDOUGALL: Just in relation to the agenda. There have obviously been days when I haven't been here and I may have missed things. One is the submitting of written submissions.

COMMISSIONER: Yes.

MR McDOUGALL: And I understand your ruling was that it will be within seven days of the close of evidence.

COMMISSIONER: No.

MR McDOUGALL: And that then there was some adjustment to that ruling-----

COMMISSIONER: The only ruling I made was for next Friday.

MR McDOUGALL: -----to next Friday, I thought.

COMMISSIONER: I had in mind initially that I would make a ruling to that effect, but in the end I made it next Friday.

MR McDOUGALL: Thank you. The other issue is, and they're interconnected, we have been given a statement by another witness by counsel assisting the Commission, Dr Wilson.

COMMISSIONER: Yes.

MR McDOUGALL: And we were hoping to have Dr Wilson called as soon as possible.

COMMISSIONER: Yes.

MR McDOUGALL: If we are to provide written submissions by the 21st.

COMMISSIONER: Yes.

MR McDOUGALL: Just apropos of that, we need to know when Dr Wilson can be fitted in, and secondly, will we have the opportunity to see written submissions by counsel assisting if they are going to be written submissions.

COMMISSIONER: There aren't.

MR McDOUGALL: There are none?

COMMISSIONER: No.

MR McDOUGALL: Very well, so they're the only issues.

COMMISSIONER: Yes. Well, I understand that the only day that really suits Dr Wilson, apart from Tuesday when we have Mr Leck, is next Friday, and I think we're endeavouring to get him to give evidence on that day.

MR McDOUGALL: That's the day of written submissions are to be in, I understand?

COMMISSIONER: It is indeed, and if that causes you or anyone else any difficulty, then I'd allow you to make a supplementary submission in that regard.

MR McDOUGALL: Because he's a most important witness so far as our case is concerned.

COMMISSIONER: Well, if that turns out to be so, then I'm happy to let you make supplementary submissions dealing with his evidence.

MR McDOUGALL: Very well, thank you.

MR ANDREWS: Commissioner, there are a couple of matters that it would be appropriate to deal with now.

COMMISSIONER: Yes, certainly.

MR ANDREWS: I'm instructed that the parties are anticipating that this document will be tendered. It is an application for clinical privileges specialists dated the 26th of June 2003 appearing to be signed by Jayant Patel of two pages with a CV attached that runs to six pages.

COMMISSIONER: Yes.

MR ANDREWS: I tender-----

MR DIEHM: I think this is the document that Mr Douglas went to tender just before lunch.

COMMISSIONER: Yes.

MR DIEHM: But which I raised some concerns about the order of the documents in the bundle.

COMMISSIONER: Yes.

MR DIEHM: So it may have already been allocated a number.

COMMISSIONER: It has been already allocated a number which is Exhibit 455, I'm told, so if you like, we'll substitute that document for the existing 455 and I'll hand that back to whoever handed it up. Thank you. So this will now become Exhibit 455.

MR ANDREWS: And Commissioner, I have a bundle of four documents with a list describing them that I'm instructed was anticipated would be tendered for the interests of the parties. There's a letter of Majella Galway to Clare Murphy dated the 13th of October 2005; a letter from Clare Murphy to Majella Galway of the same date; a summons to produce documents or give evidence to Majella Galway of the same date; and a Form 55 application by Dr Keating for sponsorship for

temporary residence in Australia of Dr Patel dated 1 February 2005.

COMMISSIONER: Should they go in as one exhibit?

MR ANDREWS: Yes, Commissioner.

COMMISSIONER: All right. Well, they will be Exhibit 457.

ADMITTED AND MARKED "EXHIBIT 457"

MR ANDREWS: And Commissioner, I have a one page statement of Dr Gerard Joseph FitzGerald signed the 11th day of September 2005 which seeks to correct some evidence that Dr FitzGerald gave in respect of Mr Leck when giving oral evidence. The effect of it is that while he'd given evidence of mentioning to Mr Leck that there were significant problems at the Bundaberg Hospital that needed to be addressed, it seems Dr FitzGerald has doubts about whether he did say that to Mr Leck. He's concerned that it may have been a conversation he had with Mr Michael Allsop, the witness who's just given evidence.

COMMISSIONER: Yes.

MR ANDREWS: I tender that statement.

COMMISSIONER: All right. Well, that will be Exhibit 458.

ADMITTED AND MARKED "EXHIBIT 458"

MR ANDREWS: There is no further business this afternoon, Commissioner.

COMMISSIONER: All right. I think at the moment we have no witnesses tomorrow, is that correct?

MR ANDREWS: I'm sad to say that's the case.

COMMISSIONER: All right. Well, we'll adjourn until Monday morning.

THE COMMISSION ADJOURNED AT 3.29 P.M. TILL MONDAY, 17 OCTOBER 2005 AT 9.30 A.M.