

Submissions

Dr Damodaran KRISHNA

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Your ref:
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Department of
Justice and Attorney-General

26 October 2005

Mr David Groth
Secretary
Queensland Public Hospitals Commission of Inquiry
Level 9
Brisbane Magistrates Courts Building
363 George Street
BRISBANE Q 4000

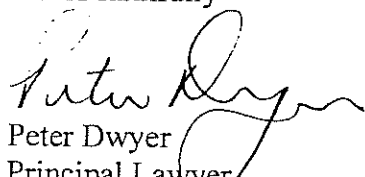
Dear Mr Groth

Submissions in response to Notices of Potential Adverse Findings

I enclose submissions on behalf of Drs Fitzgerald, Nydam, Krishna and Huxley, Ms Erwin-Jones, Mr Allsopp and Ms Miller in response to Notices of Potential Adverse Findings (or, as the case may be, Notices of Potential Adverse Findings and Recommendations) given to each of those individuals.

The submissions were drawn by Mr Farr of counsel and settled by Mr Boddice SC.

Yours faithfully


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QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY

SUBMISSIONS ON BEHALF OF DR DAMODARAN KRISHNA

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1. The evidence of Dr Krishna appears at:

Transcript: T6482/51 – 6489/29; 6515/12 – 6517/26.
2. The evidence of Dr Mullen appears at:
 - (a) Exhibit 330 – Statement of Dr Mullen, paragraphs 23 – 26;
 - (b) Transcript: T5764/55 – 5768/50.
3. The evidence of Dr Sharma appears at:

Transcript: T5697/20 – 5698/50.
4. The evidence of Dr Wilson appears at:

Transcript: T7343/48 – 7345/5.
5. Dr Krishna gave evidence that he had performed this procedure on two or three previous occasions¹.
6. There is no evidence upon which the Commission could rely to find that Dr Krishna's experience caused any adverse outcome for the patient. Whilst Dr Mullen did speak of the retrograde nail causing a further fracture, Dr Krishna explained that, in fact, was not the case and that the nail merely emphasized the pre-existing fracture at that site².
7. The scope of practice document prepared by Dr Naidoo for Dr Krishna³ was prepared some time after this particular procedure. In those circumstances, Dr Krishna did no more than undertake a procedure which he has performed at least twice previously (presumably with success) at a time when no restrictions had been placed upon him to do otherwise.

¹ T6485/40; 6486/2 - 7; 6488/44 – 6489/2.

² T6483/30 – 6484/46.

³ Annexure 6 to Exhibit 424.

8. It would appear that the patient made an uneventful recovery from the surgery⁴. Dr Mullen's criticism of the use of a retrograde nail was answered by Dr Krishna when he spoke of features in the fracture of which Dr Mullen had no apparent knowledge⁵. Additionally, Dr Wilson gave evidence that the choice of a retrograde nail was a reasonable one in the circumstances. There is no basis, therefore, to find that the procedure was beyond Dr Krishna's skill or competence.
9. That being so, there is no sufficient evidentiary basis to make adverse findings against Dr Krishna in respect of this patient.

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10. The evidence of Dr Krishna appears at: Transcript: T6501/29-54; 6520/25-40.
11. The evidence of Dr Crawford appears at:
- (a) Exhibit 404 – Statement of Dr Crawford paragraph 14;
 - (b) Exhibit 405 – report of Dr Crawford;
 - (c) Transcript: T6297/50 – 6300/30: 6318/7 – 18.
12. It is conceded that this patient suffered a poor outcome as a result of an error of judgment of Dr Krishna.

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13. The evidence of Dr Krishna appears at:
- Transcript: T6489/30 – 6494/25: 6517/30 – 6518/8.
14. The evidence of Dr Mullen appears at:
- (a) Exhibit 330 – Statement of Dr Mullen, paragraph 33;
 - (b) Transcript: T5773/50 – 5776/55; 5790/16 – 5799/26

⁴ P6516 L30 - 6517 L26.

⁵ P6487 L20 - P6488 L6.

15. The evidence of Dr Mullen in relation to this patient is that alternative treatments to that which were performed would have resulted in a better clinical outcome for the patient. It is not intended to submit to the contrary.
16. What is relevant however is the evidence that Dr Krishna gave of Dr Naidoo's involvement (or lack of involvement) in this case. Dr Krishna stated in evidence:-
- (a) That Dr Naidoo consulted with this patient at the time of her initial presentation to the hospital and recommended the procedure which Dr Krishna subsequently carried out⁶; and
 - (b) That Dr Naidoo did not supervise this procedure despite being asked by Dr Krishna to do so on two separate occasions - before surgery and during surgery⁷.
17. The effect of Dr Krishna's uncontradicted evidence was that he performed a procedure authorised by Dr Naidoo, unsuccessfully sought assistance from Dr Naidoo before commencing the procedure (in fact, Dr Naidoo at this time directed him to undertake the procedure) and sought further assistance, again unsuccessfully, during the procedure.
18. In these circumstances, no adverse finding could reasonably be made against Dr Krishna in relation to this patient.

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19. The evidence of Dr Krishna appears at: Transcript: T6494/29 – 6498/10; 6518/10 – 6519/12.
20. The evidence of Dr Mullen appears at:
- (a) Exhibit 330 – Statement of Dr Mullen, paragraph 34;
 - (b) Transcript: T5776/55 – 5779/8; 5799/38 – 5804/10.
21. A factual dispute exists between the opinions of Drs Mullen and Krishna as to the type of fracture sustained by the patient. Dr Mullen spoke of it being a subtrochanteric fracture

⁶ T6490/14 - 6492/20; 6494/7-12.

⁷ T6492/30 – 6493/16; 6494/3-25

whereas in Dr Krishna's opinion it was an intertrochanteric fracture⁸. The evidence from both doctors was that the fixation device which was used would have been correct if the fracture was in fact intertrochanteric.

22. Dr Mullen acknowledged that this was a fracture (irrespective of its type) that is notorious for not uniting or not uniting correctly⁹.
23. Whilst it is correct to say that Dr Krishna performed this procedure without supervision and without calling for assistance or supervision, the type of fracture is not clear on the evidence. It is therefore impossible to determine that an inappropriate procedure was performed. Dr Mullen made no criticism of the surgical skill of Dr Krishna in the procedure he carried out - his criticism was of the decision-making process¹⁰.
24. In circumstances where the evidence offers two different opinions as to the type of fracture, the Commission is in no position to accept one over the other. Whilst it is acknowledged that Dr Mullen is the more senior of the two doctors, that fact must be balanced against the evidence that Dr Krishna saw not only the original x-rays, but also the break itself during surgery.
25. Against that background, it would be unfair to make an adverse finding against Dr Krishna. Such findings can have serious adverse effects for witnesses, both personally and professionally as well as having an adverse effect on members of their family. This is a matter which can be further investigated (i.e. a close study of all x-rays and tomograph results) by the appropriate body, if it is considered necessary, without any adverse finding being made by the Commission.

Transfers

26. No adverse finding should be made against Dr Krishna having regard to:
 - (a) Dr Krishna had not been provided with a defined scope of practice until 2004;
 - (b) Dr Krishna was in a difficult situation of being beholden to the Area of Need certification and thus, at least, having the perception that if he did not perform as

⁸ T6496/30.

⁹ T5799/55 - 5800/1.

¹⁰ T5804/3-10.

required, he could lose that position; and

- (c) His line manager had expressed confidence in both his clinical skills and decision-making ability.

27. Any criticism of Dr Krishna's transfer practices is more appropriately directed to the system rather than to the individual. Dr Krishna was placed in a difficult situation, and conducted himself to the best of his ability.

Procedures outside scope and skill

28. There is no sufficient evidentiary basis to find Dr Krishna performed procedures outside his scope of practice, or own level of skill and experience. The most that can be said is that Dr Krishna was left by Dr Naidoo to determine his own scope of practice prior to the preparation of such a document by Dr Naidoo in 2004. After such document was prepared, there is no evidence that Dr Krishna operated outside the parameters of its contents. Furthermore, Dr Mullen stated on a number of occasions that his criticisms were not of Dr Krishna's surgical skills, rather they were of the lack of supervision being offered to Dr Krishna.
29. Accordingly, no adverse finding should be made against Dr Krishna in respect of this issue.

Level of care

30. There is no sufficient evidentiary basis to find Dr Krishna provided a level of care below that expected of a qualified Orthopaedic Surgeon. In fact, evidence to the contrary was given by Dr Crawford:

“With respect to that group of poor outcomes in the balance of 35, is it your opinion that you are unable, from the examination you had, to conclude whether the surgery was performed with reasonable care or to a lesser standard? - - All the evidence I saw was that it was performed with reasonable care.”¹¹

31. There is no evidence to show that Dr Krishna provided anything less than the appropriate

¹¹ T6297/12-20.

level of care to the best of his abilities.

32. Accordingly, no adverse finding should be made against Dr Krishna in respect of this issue.