

PART B - AS TO THE "REGISTRATION MATTERS" REFERRED TO IN THE TERMS OF REFERENCE

(a) *The role and conduct of the Queensland Medical Board in relation to the assessment, registration and monitoring of overseas-trained medical practitioners, with particular reference to Dr Jayant Patel and persons claiming to be overseas-trained medical practitioners.*

1.1 Preamble

These submissions attempt to summarise all of the instances where the assessment, registration and monitoring of International Medical Graduates have come to the notice of the Inquiry. These submissions should be read against the background that the Medical Board of Queensland approves up to 3400 applications annually.¹

1.2 Dr Jayant PATEL (BUNDABERG BASE HOSPITAL)

(a) Assessment and Registration of Dr Patel -

Suspected fraudulent acts

Dr Jayant Patel ("Patel") apparently procured his registration in Queensland as a medical practitioner by false and fraudulent means. The attached chronology² demonstrates the way in which the Board's assessors and the Registration Advisory Committee ("RAC") were misled. Patel has chosen not to explain his acts and omissions to the Commission of Inquiry.

Exhibit 421 is the duly certified police statement of the original assessor of Patel's application within the Medical Board of Queensland, **Ms Ainslie McMullen**. Paragraphs 13-16 of Ms McMullen's police statement clearly show that she was not put on inquiry by the form of Patel's "*Verification of Licensure*", because of Patel's false answers. His registration was apparently procured by unconditional fraud, in the absence of any explanation from him.

Dr Kees Nydam³ gave some further limited evidence about the circumstances of Patel's application for registration. Dr Nydam was the Acting Director of Medical Services at the Bundaberg Base Hospital ("BBH") at the time of Patel's registration. Dr Nydam said that after a couple of unsuccessful attempts to fill the position of Director of Surgery at BBH, the selection committee elected to re-advertise the position in late 2002. In fact, the advertisement was for a "*Senior Medical Officer – Surgery*". Dr Nydam explained⁴ that the position of Senior Medical Officer :

"...is a grade that includes Senior Medical Officer non specialist and Senior Medical Officer specialist..."

¹ See statement of O'Dempsey, Exhibit 28, paragraph 62

² See Attachment "A"

³ Dr Nydam's Statements are exhibit 51 and 51A. Evidence T4111 *et seq*

⁴ T4118

Dr Nydam drew the distinction between a large tertiary hospital in which a Director of Surgery would spend a lot of time teaching, and the regional hospitals where there may be two full time surgical staff and one of those is "the unlucky bunny" who ends up in the position of Director of Surgery, as it were, by default.⁵

The then- Director General of Health, **Prof. Robert STABLE**, conceded that it was a reality in the regional hospitals, but said the Director should be a specialist.⁶

It is a relevant circumstance, also, that the Industrial Award for "Senior Medical Officer" applies to all levels of Medical Officer from Superintendent down to the position above Registrar. The Industrial Award also did not make the distinction between specialist and non-specialist S.M.O's – see the evidence of **Dr Mark MATTIUSSI**.⁷

Dr Nydam also made the point that Patel filled a locum position as Director of Surgery:

"...In my mind Dr Patel was employed, was engaged as a locum, temporary post...there are certain roles for permanent staff. For reasons of pragmatism those roles haven't got the same degree of stringency for locum staff. I believe that there has been a clouding of this issue when it comes to Patel...In the way that evidence has been presented....if I employ a locum, I don't need someone to be a Fellow of any college."⁸

Professor Stable said in evidence that he did not agree with this approach.⁹

Dr Mattiussi also did not agree¹⁰

Dr Nydam made the point that, for example, in the six years he had been associated with BBH, there had been Directors of Anaesthetics who were not members of the Australian College of Anaesthetists.

Dr Nydam conceded in evidence¹¹ that the Medical Board would be given the impression by the paperwork submitted for registration that Patel, as a Senior Medical Officer, would have been under the direct supervision of a Director of Surgery, whereas, Patel was appointed as a locum to the position of Director of Surgery and therefore was not subject to any direct supervision. Dr Nydam stated that this was a typical situation which developed throughout the regional hospitals of Queensland. He said he welcomed the Inquiry's exposure of this unsatisfactory situation.

The following exchange¹², adequately encapsulates an unsatisfactory situation:

⁵ T4119

⁶ T5755

⁷ T5888, 5889

⁸ T4120

⁹ T5755

¹⁰ T5596, 5597 and T5628

¹¹ T4121

¹² T4124

"Q...and let me cut to the chase, you know, without being rude, it looks as if you are getting this SMO in, you are running him through the Medical Board as an SMO, but looks like he is going to be the head of the surgical department because it is a pretty easy headcount, he is it?"

A: I guess he is it for the period of the locum period. My experience with overseas surgeons previously at the Bundaberg Base Hospital was that we were able to get surgeons whose level of work was of a very very high quality.

Q: Doctor, but under his registration, he was not eligible for appointment to that position?

A: He wasn't appointed that, as I understand it. As I understand it, that is a position description for a permanent employee.

Q: and that was a position description that was presented to the Medical Board against which his Special Purpose Registration was granted?

A: Ok. I accept that and that was in error.."

Dr Nydam accepted¹³ that if Patel's application had gone before the Medical Board for the position of Director of Surgery, the Board might well have insisted on either a period of supervision or a closer look at his background and qualifications. Dr Nydam conceded that the Medical Board was not given the full facts. He described the confluence of events as "tragic".

It should be noted that Dr Nydam conceded that there were no concurrent attempts to attract a permanent Director of Surgery whilst Patel occupied the "locum" position.¹⁴

Needless to say, Dr Nydam did not realise Patel had made false statements to the Medical Board. He said that, on paper, Patel was an impressive candidate.

Dr Nydam also conceded¹⁵ that, as a general proposition, his strategy was to call Patel a locum for the first 12 months in the hope that Patel would ultimately hold the position of Director of Surgery permanently, and that there was no intent to find a permanent Director of Surgery in the interim. In his own defence, Dr Nydam cited the case of Dr Wakefield, who came from South Africa and occupied the position of Director of Anaesthetics and Director of Intensive Care at BBH. During the time he worked at BBH, Dr Wakefield obtained the appropriate Australian Specialist qualifications and credentials. Dr Wakefield is now a highly valued member of the staff at one of the major tertiary hospitals in Brisbane. In Dr Nydam's mind, there were many such precedents for proceeding in the way he did in relation to Patel. In further support of Dr Nydam's position, on 25 February 2003, before Patel commenced duty at BBH, Dr Nydam, in an email to Patel, urged him to seek specialist registration in Australia¹⁶.

Professor Stable regarded this way of proceeding to be an unacceptable practice.¹⁷

¹³ T4126

¹⁴ T4128

¹⁵ T4129

¹⁶ Exhibit 274 (see also T4132 lines 25-35)

¹⁷ T5756

Dr Nydam also conceded¹⁸ that once Patel arrived and was given the locum position of Director of Surgery, he did not revert to the Medical Board to advise it of the change of position due to "oversight".

Dr Nydam also conceded that the way in which Patel was appointed effectively avoided a more formal Appointments Committee process by which the specialist position of Director of Surgery might ordinarily be appointed, ie, by the establishment of a Committee which included a member of the Australian College of Surgeons and a person from Q Health Head Office who would form the Committee, together with local people, to effect the specialist appointment.¹⁹

It is submitted that **exhibit 274** – Dr Nydam's email to Patel dated 25 February 2003, in which he encouraged Patel to seek specialist registration – is a significant document for the reason that Patel did not act in accordance with that communication. If Patel had sought specialist registration from the Australian College of Surgeons, no doubt his conditions on practise imposed upon him in the state of Oregon, and his other registration history in the state of New York, would have come to light.

Dr Nydam said in evidence²⁰ that it had crossed his mind "*quite early in the piece*" that if Patel was as skilled and experienced as he claimed, it was unusual that he would take a position in Australia for a substantially reduced remuneration package. Dr Nydam said that this was an "*error of judgement*" and that he made a further error when he took Patel's explanation for this decision at face value:

"His (Patel's) explanation was that he had worked hard, he had earned a lot of money, and now it was time to give something back. Now, I have long taken the view that people who work in Public Health are either missionaries or idiots, and I thought that he was a missionary. That was an error of judgement."

It is also relevant that Dr Nydam had had previous experience with the recruitment agency Wavelength and had found them to be "*pretty superior*"²¹. He had previously been particularly happy with staff members who had been obtained through Wavelength.

Dr Nydam's perception about the process of assessment and registration of Patel is worthy of note. He said in evidence²²:

"I think one of the problems in retrospect was that there were three bodies all hoping that the other person was doing the work. I was hoping that the checks would have been done by Wavelength, Wavelength were hoping that the checks were being done by the Medical Registration Board. I was hoping, they were hoping that I would, and I think – yeah, there is a

¹⁸ T4133

¹⁹ T4133

²⁰ T4137

²¹ T4137

²² T4138

mismatch of what the expectations of each of the other party (sic) were. That's a part of the tragedy".

The Commission has heard evidence from Dr Bethell (Wavelength) and from Mr Demy-Geroe (Medical Board) that the recruitment agency conducted an assessment of Patel as a potential applicant for registration, including making direct contact with various referees, all of whom spoke highly of Patel. It was Patel's own dishonesty which prevented further inquiry by the assessor employed by the Medical Board, Ms McMullen. Dr Nydam's perception is therefore somewhat overly critical of the Recruitment Agency/Medical Board process as it applied to Patel's application for registration.

Dr Mark Mattuissi, a co author of the June 2005 review into Bundaberg Hospital, said in evidence ²³ that non-specialists can in some cases be employed as Directors in hospitals, however where the Director was the clinical and not solely the administrative leader in the hospital, that clinical leader should be a registered specialist in that clinical field. Dr Mattuissi saw the central issue as being whether there was adequate supervision available to a non-specialist Director. Where there was no such supervision, the situation was unacceptable. ²⁴

Dr Mattuissi also said that, even if Patel was employed as a locum, no matter how short-term, he should have been credentialed and privileged. ²⁵

Dr Mattuissi also said that from his general experience in the Logan District, the question of appropriate supervision of International Medical Graduates had received increased attention. ²⁶

He was aware of the Board's recent initiatives on this issue. Dr Mattuissi saw the new arrangements as a mechanism to ensure that the supervisor him/herself was appropriately qualified.

In the context of Hervey Bay, **Dr Terry Hanelt** said²⁷:

"...we have several of our directors who are international medical graduates and none of those have taken on a director's position until the College was satisfied that they should either get a full specialist recognition or deemed specialist recognition, so they've all gone through the College process prior to appointment...I honestly don't think I would be appointing somebody as director until they had been through that."

Dr Darren Keating "inherited" Patel as his Director of Surgery when he started as Director of Medical Services in April 2003.

²³ T5627

²⁴ T5628

²⁵ T5628

²⁶ T5629

²⁷ T6768

Soon after Dr Keating arrived at Bundaberg, he exhorted Patel to seek registration as a Specialist, but said that he was advised by Patel that he was awaiting some further information from the United States.²⁸

Preventative measures initiated by the Board, in relation to Assessment and Registration

Measures have been put in place which, it is submitted, are sufficient to prevent the recurrence of the combination of events which led to an incorrect initial assessment of Patel by all relevant parties, and which in turn led to his registration. In a letter to the Commission of Inquiry dated 22 June 2005, from Solicitors representing the Medical Board of Queensland²⁹, the Commission was advised, *inter alia*, that the following steps had been put in place:

1. Applicants must advise whether they have attempted any medical qualifying examinations, and, if so, the result.
2. Applicants are asked to provide a summary of their experience including any time undertaking an observership in an Australian or New Zealand Health Care Facility.
3. The Applicant is asked to consent to any assessment reports from such an observership to be obtained by the Board.
4. Along with the questions in relation to fitness to practise, the Applicant is asked whether he/she has undertaken bridging programs which are designed to prepare candidates for practise within Australia. The Applicant is now asked to consent to further communications between the Board and other individuals or entities.
5. Applicants are required to provide a complete Curriculum Vitae in standard form. This is to provide consistency in the presentation of each Curriculum Vitae of each Applicant.
6. There is now a Special Purpose Employer Form. The employer must certify that it has assessed the Applicant and believes the Applicant satisfies the qualifications and experience needed for the position the Applicant is proposed to occupy. There is also a requirement that verbal reference checks are conducted. Mandatory questions to be asked of referees are supplied to employers and are attached to the Form.
7. There must also be a clinical supervisor appointed for each Applicant. The clinical supervisor undertakes to provide the Board with any adverse reports identified. The supervisor is also required to assess the applicant at the conclusion of his/her registration.

The effect of all of these measures is to ensure that employers take responsibility for the employment of applicants and advise the Board when a potential problem is identified.

²⁸ T6831

²⁹ Exhibit 136

The further affidavit of Michael DEMY-GEROE, Deputy Registrar of the Board, gives a current picture concerning supervision requirements of the Board.³⁰

An indication of the stringency of the current Board requirements for supervision, is to be found in the evidence of Dr Danesh Sharma³¹. Dr Sharma, employed at Hervey Bay Hospital as a Surgical SMO, described how supervision was not required of him when he first obtained registration in an area of need, but that it was now required of him by the Board after he had acquired some two further years' experience in hospital practice.³²

The Board respectfully submits that Dr Sharma's evidence can be taken as supporting the Board's letter and Mr Demy-Geroe's latest affidavit, as to the extent to which the requirement for supervision of International Medical Graduates has intensified at a practical level. The fact that Dr Sharma, for his part, does not consider the supervision requirements to be warranted is not a matter adverse to the Board.

Similarly, the evidence of **Dr Terry Hanelt**, Director of Medicine at Hervey Bay Hospital, supports the proposition that current supervision requirements of IMG's are now more comprehensively defined into four separate categories.³³

Further suggested preventative measures

In his evidence, **Dr Mark Waters** argued for a more robust recruiting process which should be centralised '*into at least hubs or maybe just one database for the entire State*', and which ensures that the recruiter conducts personal interviews with International Medical Graduates³⁴. Dr Waters argued for a greater effort to integrate IMGs and their families into the communities they have been employed to serve and to provide such additional training as they may need to become an effective part of the Queensland Health workforce.

Dr Waters spoke about the Q Health Skills Development Centre which is designed to support the introduction of competency based assessment rather than, as Dr Waters put it, '*time based*' assessment³⁵.

'What I would argue that the Australian community may want or the Queensland community may want is some assurance that when you have done your five years (training and exams) you are actually competent at the procedures that you do...'

'I think we can go to a situation where we can give people an assurance that we can test the competencies of the actual procedure''.

Dr Waters said that a more intensive process of assessment and credentialing IMGs could be performed by the Skills Development Centre. Dr Waters pointed out the additional advantage that the Health District employing the IMG would not be placed in a position of

³⁰ Affidavit of Demy-Geroe, Exhibit 420

³¹ T5677

³² T5677

³³ T6716

³⁴ T4641

³⁵ T4646

conflict by also credentialing the registrant³⁶. Dr Nydam expressed similar concerns in his evidence³⁷. Dr Hanelt also referred the need for independent, and not locally-based, credentialing.³⁸

Specifically in the context of the assessment and registration of Patel, it is submitted that Patel's fraud would have been discovered by the processes currently in place, as described in Exhibits 136 and 420. The current procedures allow for more rigorous assessment before registration is granted. The increased requirement for supervision as set out in Exhibits 136 and 420, will also ensure that IMGs are monitored more closely, and the Skills Development Centre may well have a more prominent role to play in both assessment and monitoring in the future.

It is respectfully submitted that the evidence relating to the experiences of Drs. Sharma and Krishna at Hervey Bay Hospital eloquently supports these existing and suggested reforms.

(b) Monitoring of Dr PATEL after Registration;

It is assumed, for the purposes of the Board's submissions that the issue of "monitoring" Patel relates to the period after his registration and initial employment at Bundaberg.

Credentialling and Privileging of Dr PATEL

The proper credentialling and privileging of Dr Patel before or after his arrival in Bundaberg is, it is respectfully submitted, a matter primarily for Q Health. From the perspective of the Medical Board of Queensland, it can be identified firstly that a preliminary process of checking the International credentials of Patel was conducted by Wavelength Consulting. As pointed out earlier in these submissions, Dr Bethell gave evidence that he made contact with individual referees before Patel was referred to the Medical Board. The failure to properly credential Patel at "*recruitment level*" and at "*Board assessment level*" was due primarily to Patel's apparent fraudulent acts, as referred to earlier in these submissions.

Exhibit 279 is the Queensland Health Policy Statement on credentialling and privileging. The Policy states that Q Health District Managers are responsible for ensuring that the credentialling and privileging process occurs periodically. That is not a process which, at the relevant time, involved the Medical Board in the relevant sense.

It is submitted that the Medical Board was entitled to rely upon the existence of this Q Health Policy after the Board's initial assessment that each Applicant for Registration who was certified for area of need had credentials which were appropriate to the position description and appropriate for registration as a Medical Practitioner in Queensland.

Dr Mark Mattiussi said in evidence³⁹ that those responsible in Q Health would place a certain reliance upon the fact that the Medical Board had seen fit to register the practitioner on making certain checks of that practitioner. Dr Mattiussi conceded, however, that reliance upon Wavelength or Medical Board processes is only part of that process and does not

³⁶ T4654

³⁷ T4138 *et seq* and T4187

³⁸ T (Hanelt)

³⁹ T5855

amount to completion of the credentialling process in terms of the Q Health policy.⁴⁰ Again, it is submitted that if those responsible in Q Health relied upon the recruitment and registration processes for an indication that Patel was suitably credentialled, then they were erroneously relying upon a process which was tainted by Patel's own fraud.

Supervision of Dr PATEL

As a consequence of PATEL being employed almost immediately as Director of Surgery at BBH, he was not placed in any form of effective supervision. It is submitted that the "supervision" by Dr Darren Keating, was nominal only, for the purpose of Patel's re-registration in late 2003. If Patel had been in fact employed as "SMO-Surgery" at BBH, then the BBH Director of Surgery would ordinarily have been the appropriate supervisor.

After Dr Keating's arrival, Patel's first contract was due to expire in March 2004. By a letter dated 25 November 2003, Keating offered to extend Patel's contract from 1 April 2004 to 30 March 2005.

By a letter dated 1 December 2003 Keating advised the Medical Board of the extension of Patel's contract. Queensland Health had already renewed Patel's area of need certification on 21 November 2003 describing Patel as "Director of Surgery – SMO". Dr Keating's statement, paragraphs 37-40 set out the basis upon which Keating felt he was able to provide the certificate of the "clinical supervisor" dated 2 December 2003, which was required for the Medical Board assessment form for re-registration of Patel in an area of need. None of the factors outlined by Dr Keating included direct supervision of Patel's clinical competencies. Dr Keating concluded at paragraph 40 of his statement:

"as Dr Patel was in the position of Director of Surgery when I started at Bundaberg Hospital, it did not occur to me that there was any need for supervision of Dr Patel."

The best Dr Keating could do was to suggest that "peer" supervision or oversight – from Dr Gaffield, the VMO's and anaesthetists – would amount to a sufficient check on Patel's clinical skills.⁴¹ This does not meet the Board's legitimate expectations.

Thus, the Board's expectation that a Senior Medical Officer who was a generalist, and not a specialist, surgeon would ordinarily be supervised by a specialist surgeon in the hospital context was not met.

Exhibits "DWK-12" and "DWK-13" demonstrate that, to Dr Keating's knowledge, Dr Patel was only in the earliest stages of applying for specialist registration as at 5 August 2003.

During the calendar year 2004, however, concerns about Dr Patel's surgical competence began to come to the notice of Dr Keating. These various concerns were canvassed at length with Dr Keating by Counsel Assisting, Mr Douglas SC. Against the background of these concerns, on 31 January 2005, Dr Keating wrote again to the Medical Board advising that the Bundaberg Health Service District had extended Patel's contract to 31 March 2009. Once again, Dr Keating signed the assessment form as Patel's "Clinical Supervisor" as at 2

⁴⁰ T5884

⁴¹ T6824

February 2005.⁴² Counsel Assisting challenged Dr Keating as to the glowing assessments which Keating included in the forms which went to the Medical Board on this occasion.⁴³ Dr Keating ultimately conceded that, against the background of the range of concerns expressed to him during the latter half of 2004, his assessments of Patel were "overrated". Dr Keating attempted to explain himself as follows⁴⁴:

"what I do believe is I have overstated it and that I was looking at a large period of time. There were an isolated number of situations which had been provided but there had also been a large number of patients he had looked for and cared for, multiple situations Dr Patel had been involved in, and I was trying to give a fair and accurate reflection of the totality of work he did."

Dr Keating nevertheless conceded that he overrated Patel's abilities, but did not concede the suggestion that the documents were a "tissue of lies".

Later, the following exchange occurred:⁴⁵

"Q: I suggest to you sensibly and honestly, if you are acting in accordance with those attributes (of transparency) you would have included that information (that an audit review was being conducted into Patel by the Chief Health Officer) to the Medical Board?"

A: As I said, I could have provided that information. I didn't provide that information. I was not setting out to mislead or be dishonest with the Medical Board. As I said, I provided this in haste and it has now come back to bite me on the bottom, so to say."

Dr Keating was shown the Assessment form he filled out for Patel in February 2005, for the purposes of "area of need" re-registration of Patel. This form was completed by Keating at a time when he knew that an investigation by the Chief Health Officer, Dr Fitzgerald, had begun. He did not make any notation to that effect on the Assessment Form to be sent to the Board. Dr Keating said he considered the investigation to be an internal matter and not one for the Board.⁴⁶ Though he was well aware of the role of the Board through his handling of the Dr Qureshi matter, he said, it "did not occur" to him that the Patel matter should be referred to the Board.

The matters involving Dr Keating's communications with the Medical Board of Queensland, it is respectfully submitted, raise questions of Official Misconduct under the *Crime and Misconduct Commission Act 2001*. For present purposes relating to issues of ongoing supervision of Dr Patel, it is respectfully submitted that the supervision arrangements set out in the affidavit of Mr Demy-Geroe, **Exhibit 420**, would significantly reduce the likelihood of a misleading Certificate of Supervisors being submitted to the Board in the future.

⁴² Exhibit DWK-70 to the statement of Keating (pages 204-210 bundle of exhibits)

⁴³ T6879-6883

⁴⁴ T6683

⁴⁶ T7019

It needs to be borne in mind that Patel's initial apparently fraudulent conduct also contributed significantly to the lack of supervision. Disclosure of the Oregon condition would have resulted in the Board at least imposing suitable conditions upon his Queensland Registration, including the requirement for supervision.

1.3 Vincent Victor BERG (TOWNSVILLE BASE HOSPITAL)

(a) Assessment and Registration of BERG

The registration of Vincent Berg ("Berg") is an example of the extent to which the Queensland Health System, in its substantial reliance upon the recruitment of IMGs, is at risk from that very low percentage of cases in which applicants for registration may present unverifiable, or even false, proof of medical qualifications obtained in other jurisdictions.

Berg was approved conditional registration under s.17C(a) *Medical Act* on 26 October 1999, to undertake post-graduate training in Psychiatry at Townsville General Hospital for a period of 12 months. That registration was due to expire in January 2001.

The Board first became aware of the forgery allegation relating to Berg's claimed Russian medical qualifications on 19 October 2001. On that date, the Board received a letter from the Royal Australian and New Zealand College of Psychiatrists ('RANZCP') to the Australian Medical Council ('AMC') in which Berg's qualifications from a Russian University were said to be false. At this time Berg had already ceased as a registrant in Queensland or any other State of Australia. Berg, however, chose to vigorously defend himself in letters to the AMC dated 30 October 2001 and 11 November 2001. The Board considered that it was not in a position to verify or disprove Berg's claimed qualifications. The Board's dilemma was compounded in that another government agency, the Commonwealth Department of Immigration, had accepted Berg's status as a Refugee. It appears that Berg's claimed status of a Russian Medical Practitioner had been a factor in his successful application to the Department of Immigration.

It is important to note that at the time the Board received the advice of the possible forgery, Berg was not a registrant in Queensland. He was not known to be a registrant in any other Australian jurisdiction.

It is submitted that the Board cannot be criticised for taking its initial view that Berg's qualifications were unable to be verified, rather than taking the more stringent view that they were false. Undoubtedly several factors influenced the Board's position as at late 2001:

- Berg had taken the step of seeking specialist registration through the AMC. A person who held demonstrably false qualifications may well not have taken such a step; and
- In two spirited defences, in direct response to the allegation of forgery, Berg claimed Refugee status and claimed that the bold assertion by the Russian University was yet another attempt to persecute him; and
- The Board's file showed that Berg had the support of a number of psychiatrists, both in Sydney and in Townsville, who spoke well of his clinical skills. This at least indicated the likelihood that he was duly qualified.

The Board is aware that the circumstances surrounding Berg's registration in Queensland are now the subject of an intensive police investigation, particularly in view of recent allegations that Berg may have engaged in sexual misconduct in Queensland, particularly in the course of his employment at Townsville Base Hospital. In all of those circumstances, may be inappropriate to further explore this issue in detail. It is anticipated that a thorough police investigation will establish once and for all whether Berg has been a skilful fraudster, or whether he has indeed been further persecuted by the allegation emanating from the Russian University that his proffered qualifications are bogus. The Board has recently given significant assistance to that Police investigation.

The Board strongly submits that this Commission of Inquiry is not in a position to actively assert that Berg's qualifications are forged. It is in a position to state that there is an allegation that Berg's qualifications were forged.

It should be kept in mind that if Berg is shown to be a skilful fraudster, then he has also managed to hoodwink the Department of Immigration, which conferred Refugee status upon him, at least partly, it seems, upon the strength of his claimed qualification as a specialist medical practitioner.

(b) The Board's response to the allegation of forgery

Events occurring after 19 October 2001 advice that Berg's University qualifications were claimed by that University to be forgeries, can conveniently be canvassed in these submissions without the risk of compromising the Queensland Police Service Investigation.

On 10 January 2002, the Medical Board of Queensland issued a Certificate of Good Standing which was valid for a period of three months. The Certificate was issued because the Board had the view at that time that it was unable to substantiate, one way or the other, the forgery claim. On 11 February 2002, the Western Australian Medical Board contacted the Deputy Registrar of the Queensland Medical Board after provisionally registering Berg's application for area of need registration. The Western Australian Board was advised of the Queensland Board's concerns regarding the veracity of Berg's qualifications. The Queensland Board was subsequently notified, on 15 March 2002, that W.A had cancelled Berg's registration. The Certificate of Good Standing dated 10 January 2002 contained within it a clear and important qualification which was meant to stimulate just the kind of inquiry which did come from Western Australia:

'the Board has not been able to verify the qualification on which Dr Berg's registration was granted'.

That qualification was placed on the Certificate in the expectation that any other Australian Board, or International Board, would be put on inquiry.

The Board acknowledged to the Commission, in its letter dated 16 August 2005⁴⁷ that the Certificate dated 10 January 2002 should not have been issued in all the circumstances. Indeed, it is apparent that the Board's position changed over time when Berg was unable to further verify his claimed Russian qualifications.

⁴⁷ Exhibit 288, p.2, paragraph 3

The Commission is aware that in a letter dated 28 January 2003, the then President of the Medical Board of Queensland acknowledged that Berg *'did not hold recognised qualifications to enable him to be registered to undertake post graduate training in psychiatry.'* This communication was not meant to indicate that the Board was in possession of any further information conclusive of the fraud allegation. It is to be hoped that the Queensland Police Service investigation will be able to conclude this issue once and for all by making appropriate inquiries directly and in person with the relevant Russian University.

The Board's letter dated 16 August 2005 makes it clear that, when three separate registering bodies were contacted in 2001 and 2002, in each case the Queensland Board advised that it had not been able to verify Berg's qualifications. At the very least, this shows that the relationships between the various Australian Medical Boards and the New Zealand Medical Board are such that there is a free flow of inquiry between them. In practical terms, this meant that Berg was not afforded permanent registration in any of these jurisdictions whilst the matter of the veracity of his qualifications remained unresolved. The fact that the matter had not been further investigated by the Queensland Board since that time was due to Berg no longer being registered within Queensland.

The Board has frankly acknowledged its regret that the Townsville Health Service District was not notified of the difficulties with Berg's registration until Dr Toft's letter dated 28 February 2003. The failure to notify occurred against the background that the Board, during 2002, held the view that the qualifications could not be verified one way or the other, and that he had departed Queensland, to the Board's knowledge.

In all of the circumstances, the Berg incident should be seen as unique. See in particular the evidence of **Dr John Allan**.⁴⁸

The events surrounding the registration and de-registration of Berg should also be seen as an example of the vulnerability of the Queensland Health system to possible sharp practice by International Medical Graduates. Current measures put in place by the Board since May 2005 are designed to detect such possible sharp practice.

(c) Monitoring of BERG whilst he was employed at Townsville

The second statement of Dr Andrew Johnson⁴⁹ clearly shows that there was a high level of supervision of Berg after he was appointed to Townsville Base Hospital. It is of note that Dr Johnson acknowledged that:

*"...there was a division within the psychiatry ranks regarding Vincent Berg and at least 2 consultants supported him".*⁵⁰

The statement of Dr John Allan⁵¹ also demonstrates a commendably high level of close supervision of Berg. As a result of this close supervision by Doctors Allan and Johnson, Berg's initial term of employment was not renewed, and indeed, after 8 months of the 12

⁴⁸ p3500 l.17 to p3501 l.10 Day 33

⁴⁹ Exhibit 234, paragraph 7 *et seq*

⁵⁰ Exhibit 234, paragraph 9

⁵¹ Exhibit 245, paragraph 16, *et seq*

month appointment had elapsed, Berg was already facing a "show cause" proceeding in relation to his questionable clinical performance.

Questions about Berg's qualifications only arose after Berg ceased to be registered in Queensland.

The Board respectfully submits that, on the question of monitoring of Berg whilst he was a Registrant, the evidence in this instance, in contradistinction to the evidence relating to Patel in Bundaberg, reveals the kind of supervision which the Board could reasonably expect to occur where an International Medical-Graduate was registered for the purpose of employment in a supervised position in a Queensland Hospital.

1.4 Dr Vitomir ZEPINIC (TOOWOOMBA HOSPITAL)

In 1998, Dr Zepinic ("Zepinic") applied to the Australian Medical Council ("AMC") for assessment of his specialist qualifications in psychiatry.

In a letter dated 19 March 1999 the Royal Australian and New Zealand College of Psychiatrists ("RANZCP") advised Zepinic that he had been granted exemption from certain requirements, but was required to complete the General Medicine Examination and at least six months familiarisation before being eligible to sit the Clinical Examinations. The requirement for written confirmation of his psychiatric qualification from Yugoslavia was waived. The familiarisation period was a period of employment as a Medical Officer, with commitment from a specialist psychiatrist. Zepinic's supervisor was required to meet with him at least once a fortnight and provide a statement to the College at the completion of the period of familiarisation.

Zepinic's file held by the Medical Board of Queensland has been supplied to the Commission. It includes a Degree Certificate from the University of Sarajevo Faculty of Medicine, which shows that Zepinic graduated as a Medical Doctor in 1976.

A second Diploma from the University of Belgrade shows that Zepinic was awarded a Ph.D. Degree from the Faculty of Medicine of the University of Belgrade in 1985. The additional qualification is described as "*Doctor of Medical Sciences – Ph.D.*".

The College seems to have been influenced by the reference of Dr N Chuchkovich, a Psychiatrist practicing at Strathfield in New South Wales. The reference was a glowing one. It was dated 22 February 1999. Dr Chuchkovic expressed the opinion that Zepinic was performing in the area of Psychiatry "*at a level of Senior Consultant*". Dr Chuchkovic spoke of Zepinic's significant contribution to Psychiatry in Australia, New Zealand and at the European Universities from whence he came.

On 17 February 2000 Zepinic sought conditional registration to fill a training position at Toowoomba Health Service District Mental Health Service. This was to meet the College's requirement that he undertake a period of supervised clinical practice in psychiatry.

The Medical Board approved Zepinic's conditional registration pursuant to s.17C(f) on 4 April 2000.

On 3 January 2001, Zepinic's Supervisor, **Dr Mark Kløver** of the Toowoomba District Mental Health Service submitted a report which stated that Zepinic's clinical performance was satisfactory within the four domains of Psychiatric practise. Dr Kløver advised that his contract with the District had been extended. Dr Kløver added:

"...at this stage it would be our intention to offer him a permanent position should he be successful with the Fellowship exams."

On 8 May 2001 Zepinic sought to renew his conditional registration to undertake further specialist training in the District as a Senior Medical Officer – Psychiatry. This application was approved, consistent with the College's accreditation of Zepinic for training purposes.

The Board issued a conditional Certificate of Registration for the period 9 June 2001 to 8 June 2002. His employment in the Toowoomba District was also extended until that time. His registration was contingent upon him undertaking approved training within the District.

On 10 December 2001, the Office of Health Practitioner Boards received advice from RANZCP that it had "concerns" in relation to the veracity of documentation submitted by Zepinic to the AMC for his specialist assessment and advanced standing. RANZCP advised that it was seeking further advice from the AMC. A handwritten note on the letter suggests that further advice was obtained from RANZCP to the effect that the post graduate qualification was thought to be in the non-clinical field of Psychology.

On 22 January 2002, the Board resolved to distribute the RANZCP letter to the Toowoomba Hospital and to all other Boards and Councils.

On 5 April 2002, more detailed advice was received from the AMC to the effect that after cessation of hostilities in the old Yugoslavia it had re-established communication with Belgrade University and received advice from the Dean to the effect that Zepinic had completed post-graduate training in psychotherapy.

On 9 April 2002, the Board issued a Show Cause Notice to Zepinic. By that time, Zepinic had moved to Sydney. In a letter dated 24 April 2002 to the Board, Zepinic maintained that he had an overseas qualification in psychiatry and that he had made all appropriate disclosures to the examination and exemptions sub-committee of the RANZCP four years previously.

On 14 May 2002 the Board considered the response of Zepinic to the Show Cause Notice and considered that he had failed to adequately respond to the issues therein. Accordingly, the Board cancelled Zepinic's special purpose registration.

In the result, though Zepinic was appropriately qualified as a Medical Doctor, it appears that he overstated his post-graduate qualifications. That overstatement was detected by the AMC approximately 18 months after he commenced his employment in the Toowoomba District, as a routine part of the AMC's specialist accreditation process.

It is noteworthy that Zepinic impressed both an established Sydney Psychiatrist, who became his initial referee, and his immediate Supervisor in Toowoomba, an experienced Clinician.

The procedures for specialist assessment by AMC, at that time, and currently, meant that the Medical Board of Queensland had the satisfaction of knowing that the applicant's qualifications for the speciality of psychiatry would be rigorously assessed by AMC. Zepinic's employment was at all times in a training position. Many practitioners with a basic medical degree commence their specialist accreditation in a similar way. The significance of this matter is that Zepinic overstated his qualifications from Belgrade University.

The Board submits that this is yet another case which demonstrates the vulnerability of the system to applicants who overstate their qualifications as well as those who, perhaps like Vincent Berg, have falsely manufactured the appropriate qualifications.

The Board respectfully submits that it is not a matter in which it can be criticised for some serious failure in its processes.

It is noteworthy that these events unfolded in the period 1998-2001. Current procedures would minimise the risk of a similar occurrence today.

1.5 Dr Thamara Ranjika MUNASINGHE (TOWNSVILLE BASE HOSPITAL)

In October 2002, Thamara Munasinghe ("Munasinghe") applied for registration in an "area of need" position of Junior House Officer, Townsville Hospital. Her application and her supporting documentation showed that she had the following professional qualifications:

- (a) Assistant Medical Practitioner, Sri Lanka, 1990;
- (b) Registered Medical Practitioner, Sri Lanka Medical Council, 1999;
- (c) Graduate in General Medicine from the State Medical Academy of St Petersburg University, Russia – 2000;

Munasinghe had worked with the Sri Lankan Air Force, 1990-1992 and as a Medical Practitioner attached to the Department of Health, Sri Lanka, 1992-2002.

On 12 November 2002 the Board approved special purpose registration from November 2002 to January 2003 subject to completion of registration requirements. She was required to produce an original certificate of good standing, and to attend for interview with a Board member.

Munasinghe was due to give birth on 20 November 2002. She was interviewed by telephone by a Board member.

On 10 January 2003 the Deputy Director of Medical Services, Townsville Hospital, reported that he was unable to comment on Munasinghe's performance due to her advanced pregnancy, but that Townsville Hospital had appointed Munasinghe to a Junior House Officer position for the 2003 medical year and sought assistance in re-registering her.

There was a fresh application for special purpose registration, followed by a Board resolution on 28 January 2003, approving her special purpose registration until 18 January 2004.

On 2 June 2003 the Acting Deputy Director of Medical Services, Townsville Hospital, contacted the Board and advised that the Hospital had significant concerns regarding Munasinghe's competence, and was questioning whether she was medically qualified. She was subsequently interviewed by the Acting Deputy Director and Director of Medical Services, Dr Andrew Johnson, and asked to provide details of her training and experience, including her academic record. She did so. It then became apparent that there were two pathways to full registration as a Medical Practitioner with the Sri Lanka Medical Council. The second pathway was the completion of a paramedical course leading to qualification as an Assistant Medical Practitioner. After a period of eight years' service within Government institutions, the Director General of Health may then certify the person to be fully registered as a Medical Practitioner. The Board had not previously encountered an Applicant so qualified from Sri Lanka.

In a memorandum to the Registration Advisory Committee of the Medical Board, Deputy Registrar Michael Demy-Geroe described the circumstances of the awarding of the St Petersburg Degree as "*disturbing*". Mr Demy-Geroe reported that Munasinghe was granted extensive credits for her past training and experience and undertook only two years of external study and a 10 month residential period before qualifying for the Russian Degree. He reported that an Internship period did not appear to have been undertaken. Townsville Hospital advised that Munasinghe was interviewed again on 10 June 2003 in the company of her husband, who was a duly qualified Medical Registrar at the Hospital. She then resigned from her position.

There were no misrepresentations in Munasinghe's application. Her overall experience and qualifications gave the appearance of being acceptable for a Junior House Officer under supervision in a Hospital. It was her lack of skills which alerted the Townsville Hospital to the issue of her formal qualifications.

Mr Demy-Geroe expressed the view that there were no grounds upon which Munasinghe's registration could have been cancelled by the Board. Action would have been necessary on competency grounds. (see s.59 *Health Practitioners [Professional Standards] Act 1999*).

Mr Demy-Geroe expressed the intention to notify the AMC of the disclosed Sri Lanka registration issues and the circumstances of the St Petersburg Medical Degree. It was thought that other Russian medical schools might also be under suspicion.

As a consequence of these events, a direction was given to registration staff to take a more stringent approach to applicants relying on a Russian primary medical qualification for special purpose registration.

On 24 June 2003, the Board considered the memorandum and endorsed the actions and recommendations of Mr Demy-Geroe.

This is a case in which appropriate supervision brought Munasinghe's clinical shortcomings to light. A closer scrutiny of her primary qualifications was followed by appropriate action by the Board.

1.6 Dr Tariq Salman QURESHI (BUNDABERG BASE HOSPITAL)

Nurse Toni Hoffman gave evidence ⁵² at a time when she was acting DON, inappropriate behaviour by Dr Qureshi ("Qureshi"), an IMG was reported to her by other staff. The initial complaint related to the allegedly inappropriate way in which a patient was examined. Complaints were also received from two other nursing staff regarding allegedly inappropriate behaviour towards them. Nurse Hoffman said that she was requested by Director of Medical Services, Dr Keating to ask Qureshi to telephone him. Subsequently, she was notified that Qureshi was required to be chaperoned whilst working within the Hospital. Nurse Hoffman advised staff urgently about this development.

Nurse Hoffman said in evidence that subsequently, during a meeting with Dr Keating and incoming DON Linda Mulligan, she was advised that Police had attended at Qureshi's residence to find that he had left the country the day before.

On day 11 of the Commission of Inquiry hearings, the Commission was advised by Senior Counsel Assisting, Mr Andrews ⁵³ that on 21 October 2003, Dr Keating spoke with the patient involved in the complaint against Qureshi. The patient gave permission for Dr Keating to make a complaint to the Medical Board. Dr Keating advised Qureshi that the complaint had been made.

Dr Peter Miach also gave evidence ⁵⁴ that after he heard about complaints of sexual harassment, he became aware of an "edict" that Qureshi was required to be chaperoned in the hospital. Mr Miach recalled that Qureshi disappeared after Police showed an interest in him.

Nurse Martin Brennan gave evidence ⁵⁵ of a perception of inactivity in relation to Qureshi on the part of the Director of Medical Services, Dr Keating.

The Medical Board's file in relation to Qureshi was delivered to the Commission of Inquiry at an early stage. An examination of that file reveals that Dr Keating acted quickly in relation to Qureshi, once he received a complaint.

It should be acknowledged that sexual misconduct allegations are not peculiar to IMGs in an "area of need". The Board's file reveals that timely measures were taken to deal with the complaints when they were received.

The Board's file, which was supplied to the Commission, reveals the following chronology of events:

- 28.08.03 - written "notification of complaint" of a sexual nature received from patient;
- 28.08.03 - Dr Keating confronted Qureshi, who denied acting inappropriately. Dr Keating counselled Qureshi about his conduct. Dr Keating followed up with the patient, who told him she did not wish to take any further action.

⁵² T69, 70

⁵³ T1118, 1119

⁵⁴ T340

⁵⁵ T2174, 2175, xxmT2182, 2183

- 19.10.03 – “notification of complaint” of a sexual nature received from patient.
- 22.10.03 – Letter Keating to Medical Board Complaints Unit re: second complaint but referring also to first complaint.
- 06.11.03 – email Nurse Hoffman to Keating re: three inappropriate incidents with nursing staff. Hoffman advised that no formal complaint from the nurses was likely.
- 13.11.03 – memo complaints assessment co-ordinator to Medical Board Complaints Committee – Keating’s complaint described as a “professional standards issue” referred to Health Rights Commission.
- 17.11.03 – Medical Board advice to Keating that his complaint would be considered at the next meeting of the Board.
- 08.12.03 – Keating received a report from staff about inappropriate conduct with a patient.
- 09.12.03 – Keating interviewed the patient
 - Keating interviewed Qureshi who denied the allegations.
- 11.12.03 – Letter Keating to Medical Board Complaints Unit advising of further incident, that Qureshi has a chaperone and that administrative action has begun under Queensland Health Code of Conduct.
- 16.12.03 – “notification of complaint” from patient #3 re: inappropriate approach by Qureshi.
- 17.12.03 – Qureshi enquired of the Medical Board as to whether outstanding complaints would impact on his renewal of registration in March 2004.
- 18.12.03 – fax Medical Board Complaints Assessment Co-ordinator to Keating requesting further information re: the various complaints.
- 24.12.03 – Letter Keating to Medical Board Complaints Assessment Co-ordinator supplying further information.
- 29.01.04 – Q Health Internal auditor referred Keating’s complaints to CMC (see letter dated 13.04.04)
- 24.02.04 – Medical Board reviewed the complaint material and noted that an investigator had been directed to investigate.
- 11.03.04 – Letter Medical Board Complaints Co-ordinator to Keating advising that an investigator will be appointed, but there will be some delay because of the backlog of complaints.
- 13.04.04 – Letter Q Health internal auditor (investigations) to Medical Board advising that on 29 January 2004, it referred Keating’s complaints to the Crime and Misconduct Commission, who said that it intended to report the allegations to the Queensland Police Service. Also reporting QPS advise that prior to interviewing Qureshi he fled the jurisdiction. Warrant issued for Qureshi’s arrest and “passenger alert” and QPS advice to Australian Immigration and Interpol.
- 04.05.04 – Medical Board resolved to initiate an investigation if Qureshi re-registers in Queensland. Notice to be placed on the file.
- 23.07.04 – Letter Keating to Medical Board advising that Qureshi was terminated effective 14 March 2004.
- 21.04.05 – Advice from Medical Council of NZ to Medical Board re: presence of Qureshi in Gisborne, NZ.

Medical Board liaised with Detective Borland of Bundaberg CIB re: this information.

1.7 Dr Isak MAREE (TOWNSVILLE DISTRICT/CHARTERS TOWERS HOSPITAL)

On Sunday 17 December 2000, patient Kathryn Sabadina presented at Charters Towers Hospital with severe pain from an infected eye tooth. Dr Isak Maree ("Maree") administered a general anaesthetic for the purpose of her dentist removing the tooth. Almost immediately, an emergency developed and despite the attempts of numerous people to resuscitate her, Ms Sabadina died. The Queensland Health investigation was finalised by 20 February 2001, but the investigation of the Queensland Police Service was not forwarded to the Coroner until 25 November 2003. The Coroners Inquest commenced on 18 July 2005. The State Coroner, Mr Barnes, delivered his findings on 24 August 2005.

Maree was the Medical Superintendent of Charters Towers Hospital. He is an IMG registered to practice in an area of need.

Appearing in Appendix "B" attached hereto are the relevant findings of the State Coroner which the Board wishes to extract in full.⁵⁶

It is respectfully submitted that this tragic case has been expertly analysed by the Coroner. The Coroner's findings expose the difficulties facing IMG's in small regional hospitals.

1.8 Dr Dinesh SHARMA (HARVEY BAY HOSPITAL)

Dr Sharma ("Sharma") was a qualified Orthopaedic specialist in Fiji before obtaining registration to fill an area of need at Fraser Coast Health Service District from 25 February 2003 to 25 January 2004. Sharma was employed as a Senior Medical Officer at Hervey Bay Hospital.

Supervision

The Commission hearings firstly focussed upon the issue of supervision of Dr Sharma by staff Orthopaedic specialist Dr Naidoo. Attention was drawn to the letter from the Medical Board of Queensland dated 13 March 2003⁵⁷, in which Dr Sharma was initially advised of the granting of special purpose registration for the above period. The letter contained the following words:-

"conditions imposed on your registration are as follows: Nil"

It is respectfully submitted that any attempt to equate the imposition of "*conditions*" with the requirement for "*supervision*" of a Senior Medical Officer (being an International Medical Graduate with special purpose registration) is misconceived. Attention is drawn to Subdivision 7 of the *Medical Practitioners Registration Act 2001*, which provides the scheme for imposition of conditions of practice upon any Registrant. See in particular S.58 & 59.

⁵⁶ pages 24-30 State Coroners "*Findings of the Inquest into the death of Kathryn Marnie Sabadina*"

⁵⁷ Exhibit 358

It is respectfully submitted that a distinction must be drawn between the above legislative provisions on the one hand, and the expectation of the Board on the other hand, that an International Medical Graduate obtaining special purpose registration in a Q-Health Hospital as a Senior Medical Officer will be subject to supervision in the Hospital setting. That requirement and expectation is borne out by the terms of the following documents:-

Exhibit 361- "Form 1" application by employer

Exhibit 360 – "Assessment Form, special purpose registrants"

In the first-named document, the requirement as at early 2003, was for the employer to state in general terms the nature of the supervision which would be afforded to the International Medical Graduate.

As to the second-named document, the certification of the International Medical Graduate's clinical supervisor was required before re-registration could be approved. Thus, the method of special purpose registration as it existed in early 2003 did not provide for any formal certification by an identified supervisor until the first period of registration had passed, and re-registration was sought for a further period. As Mr Demy-Geroe, Deputy Registrar of the Board, explained in evidence;⁵⁸

"I think in the hospital structure generally one expects that there is supervision at all levels..."

Q: The employer didn't specify supervision available, in that respect, was that Form 1 deficient or is that how they are regularly left?

A: I think in the case of hospitals they are sometimes left like that and at that time that wouldn't have raised any concerns because, again, as I have indicated, there was an expectation that hospital's are a supervised environment..."

Mr Demy-Geroe agreed with Senior Counsel Assisting that it would be feasible for annual re-registration applications to require the applicant to obtain from the employer a certification as to the degree of supervision that the certifier has exercised.⁵⁹ Mr Demy-Geroe's Affidavit, **Exhibit 420**, demonstrates that current requirements for supervision are much improved.

Registration

The Commission hearings subsequently focussed upon the registration of Dr Sharma by the Board. Counsel Assisting raised the question whether Certificates of Special Purpose Registration for Drs. Sharma and Krishna⁶⁰ may amount to registration of those General Practitioners as a Specialist.

The "Certificate of Registration Special Purpose – Section 135" for Dr Sharma for the period 17 January 2005 to 16 January 2006 describes the "Special Purpose Activity" as follows:-

⁵⁸ T492

⁵⁹ T493

⁶⁰ Exhibit 438

"to fill an area of need as a Senior Medical Officer in Orthopaedics at Fraser Coast Health Service District or any public hospital authorised by the Medical Superintendent on a temporary basis." (emphasis added)

The Commission heard evidence that, although Dr Sharma had specialist qualifications in Orthopaedics recognised in Fiji, he was at all times recognised in Queensland as a General Practitioner and not as a Specialist.

The observations of Counsel Assisting⁶¹, and subsequent observations by the Commissioner, raised the question whether the Certificate of Registration, on its face, and as a matter of law, amounts to an impermissible registration of Dr Sharma as a Specialist in Orthopaedics.

The Commission of Inquiry has the Board's registration file in relation to Dr Sharma. Some relevant documents have been extracted from that file and are an Exhibit in the proceedings.⁶² The document entitled "*Queensland Health Application for Area of Need Certification*", signed by Director of Medical Services Dr Terry Hanelt and dated 14 January 2003, shows that the position in respect of which Q Health certification was sought and obtained was:-

"Senior Medical Officer, Orthopaedics"

Dr Hanelt gave evidence⁶³ about the difference in procedures between an International Medical Graduate obtaining general registration and the process for one who obtains "*deemed specialist registration*" in an area of need. As Director of Medical Services, Dr Hanelt said he was required to "*submit reams of documentation and forms to the Australian Medical Council*" in circumstances where deemed specialist registration is sought. Dr Hanelt also gave evidence that, in relation to the position of Senior Medical Officer within the hospital system throughout Queensland, some SMO's are Specialists and some are not.⁶⁴ With reference to the "*Queensland Health Application for Area of Need Certification*" (but in the context of the Application in respect of Dr Krishna), Dr Hanelt said that the position he applied for was a generalist position as a "*Senior Medical Officer – Orthopaedics*", not a Specialist position.⁶⁵ The position description for "*Senior Medical Officer – Orthopaedics*" for the Fraser Coast Health Service District is part of **Exhibit 446**. That document demonstrates firstly that the position classification of "*C1-1 to C1-5*" was a public service pay classification relating to General Practitioners employed as Senior Medical Officers in the Queensland hospital system. Dr Hanelt explained that Senior Medical Officers who were registered as Specialists had a pay scale which began with the designation "*MO*". In addition, page 4 of the position description recites that the appointee must have the minimum qualification of:-

"Registration as a Medical Practitioner with the Medical Board of Queensland."

⁶¹ T6677

⁶² Exhibit 447

⁶³ T6771, 6772

⁶⁴ T6775

⁶⁵ T6776

Dr Hanelt said⁶⁶ that on the "Application for Area of Need Certification", not only did he use the position description designation, but he ticked the box entitled "Hospital" and did not tick the box entitled "Specialist Practice"; nor did he tick the box for "Private Practice" in circumstances where he knew specialists in the public health system had a right to private practice.

It is submitted that the effect of Dr Hanelt's evidence is that in his first "Application for Area of Need Certification" he applied for, and was certified for, a generalist position within the Fraser Coast Health Service District, for a Senior Medical Officer practicing in Orthopaedics. The document shows that a representative of Queensland Health, M Catchpole, endorsed the certification on 16 January 2003. This certification is a condition precedent for registration. It was not a certification for a specialist position.

Exhibit 447 also contains a Certificate of Registration for the period 27 February 2003 – 25 January 2004 for Dr Sharma, which was created as a result of the Application to fill an area of need. The endorsement on the Certificate of Registration for that period states:-

"Special Purpose Activity: to practise at Fraser Coast Health Service District or any public hospital authorised by the Medical Superintendent of Maryborough Base Hospital on a temporary basis".

A further "Application for Area of Need Certification" dated 12 November 2003 also shows that the position sought by Dr Hanelt was that of "Senior Medical Officer, Orthopaedics" being a generalist position and not a specialist position, in a hospital. The resultant Certificate of Registration states:-

"Special Purpose Activity: to practise at Fraser Coast Health Service District, or any public hospital authorised by the Medical Superintendent on a temporary basis".

The second Certificate of Registration is for the period 26 January 2004 – 25 January 2005.

It is the third Certificate of Registration, and the one put into evidence by Counsel Assisting as part of **Exhibit 438**, which has a different certification upon its face and relates to the further period 17 January 2005 – 16 January 2006:-

"Special Purpose Activity: to fill an area of need as Senior Medical Officer in Orthopaedics at Fraser Coast Health Service District or any public hospital authorised by the Medical Superintendent on a temporary basis". (emphasis added)

It is respectfully submitted that this third Certificate of Registration does not amount to evidence of the registration of Dr Sharma as a Specialist in Orthopaedics at the Fraser Coast Health Service District. Although the description of the Special Purpose Activity in the third Certificate is different in its terms to the first two Certificates, it is merely descriptive of

⁶⁶ T6776

the position for which certification for area of need was sought and obtained. Refer further to the Board's Executive Summary accompanying these submissions.

1.9 Dr Damodaran KRISHNA (HERVEY BAY HOSPITAL)

Dr Damodaran Krishna ("*Krishna*"), like Dr Sharma, was a qualified Orthopaedic Specialist in Fiji before first obtaining registration to fill an area of need at Fraser Coast Health Service District from 18 July 2002 to 18 July 2003.⁶⁷ Krishna was also employed as a Senior Medical Officer at Hervey Bay Hospital.

Supervision

The Board's submissions in relation to the distinction between the imposition of "*conditions*" and the requirement for "*supervision*" are set out in the previous submissions in respect of Dr Sharma. Those submissions apply equally to the position of Dr Krishna.

During the evidence of **Dr Terry Hanelt**, Director of Medical Services for the Fraser Coast Health District, issue was taken in relation to the certification of Dr Hanelt on the "*Form 1*" which at that time was required to be submitted to the Board where re-registration for an area of need position was sought. Dr Hanelt's attention was drawn to the following endorsements on the Form 1:-

"supervision available: supervision by a Staff Specialist "business hours" and as necessary after-hours".

"Consultant Advice Available: consultant advice and/or assistance is available 24 hours a day, 7 days a week."

Dr Hanelt acknowledged in evidence that, given the limited nature of the actual supervision able to be afforded by Dr Naidoo to Drs. Krishna and Sharma, in retrospect, a reference to "*remote supervision*" should have been included.⁶⁸ Dr Hanelt also conceded that it was more accurate to say that consultant advice was available 24 hours a day, 7 days a week, but that it was not accurate to report that consultant assistance was available on that basis.⁶⁹

Dr Hanelt said in evidence that Dr Naidoo had told him that he would make himself available to the SMO's if they required advice, over and above his formal on-call commitment:

"certainly there were times when Dr Naidoo was not on-call that I was aware that he was called by the SMO's to provide assistance and I was not aware of times where he was in town that he was unwilling to provide advice or assistance."⁷⁰

Dr Hanelt conceded that a more accurate expression of "*supervision available*" was:

⁶⁷ see Exhibit 446

⁶⁸ T6717

⁶⁹ T6718

⁷⁰ T6719

*"after hours, ...no direct supervision available"*⁷¹

For his part, Dr Krishna said in evidence that between commencement at Hervey Bay in July 2002 and the present date, he had performed 550 procedures.⁷² He acknowledged in evidence that the various forms of supervision provided by Dr Naidoo to him were as follows⁷³:

- He was directly observed by Dr Naidoo whilst he conducted surgical procedures.
- Dr Naidoo was in a position to assess post operatively the outcomes for Dr Krishna's patients. Dr Krishna could remember "a few times" when he received constructive comments from Dr Naidoo about the way he performed the procedure.⁷⁴
- From Dr Krishna's perspective, Dr Naidoo was in a position generally to assess his general level of surgical competence.
- Dr Naidoo conducted ward rounds involving Dr Krishna's patients.
- At Orthopaedic Clinic, on occasions Dr Naidoo directed patients to him and was in a position to know what those patients' outcomes were.
- Dr Naidoo was aware of the referees who supported Dr Krishna (e.g. Dr Robert Ivers of Toowoomba Base Hospital).
- Dr Naidoo was available for his assistance if he needed advice during a particular Orthopaedic surgical procedure.
- Dr Krishna said he was able to speak to Dr Naidoo by telephone to seek his advice. Dr Krishna could not remember any situation where such advice was not available.

Dr Krishna said that, apart from one particular case when Dr Naidoo did not attend to assist him, he could not recall any other instance when Dr Naidoo did not make himself available to him when he requested assistance.

It is respectfully submitted that the above evidence, though it describes different types of "supervision" must be evaluated against the background that an International Medical Graduate is unlikely to be overly critical of an issue such as supervision by a Supervisor who is a Queensland-registered Specialist. The IMG's tenure in Australia is dependant upon his/her tenure in employment in a declared area of need. The Commission is respectfully referred to the cross-examination of Dr Hanelt by Mr Farr on behalf of Q Health in this regard.⁷⁵

The evidence suggests that the nominated supervisor of Drs. Sharma and Krishna, Dr Naidoo, was absent on approved leave throughout a considerable period of the calendar year 2004.⁷⁶ Other evidence tendered before the Commission suggests that some days of Dr Naidoo's absences may have been unauthorised. This has yet to be affirmatively established.

⁷¹ T6720

⁷² T6509

⁷³ T6509

⁷⁴ T6509

⁷⁵ T

⁷⁶ Summary Exhibit 432

Against this background, it seems that the way in which Dr Naidoo managed the situation was to rely upon the ability of Drs. Krishna and Sharma to conduct Orthopaedic procedures within a "scope of service", which Dr Naidoo provided to them. It seems that the "scope of service" was provided to Dr Krishna on 1st January 2004⁷⁷, although Dr Krishna remembers being provided an earlier, less particular, "scope of service".

Dr Krishna did not characterise the content of the "scope of service" as a mere "act of faith" on the part of Dr Naidoo; on the contrary, Dr Krishna said:⁷⁸

"I think he must have based his assessment on the post-op outcomes because even if he has not seen the operating, he has seen the patient in the ward post-op and also he must have taken into consideration my employment in other hospitals in Queensland".

Dr Krishna's evidence is supported by the statement of **Dr Anthony Wilson**⁷⁹. Dr Wilson, an Orthopaedic Surgeon in Toowoomba, had Dr Krishna as his non-training registrar in 2002. Dr Wilson spoke highly of Dr Krishna's ability to work independently and to form a correct judgment as to any procedure which was beyond his scope of practice⁸⁰. He substantially, but not completely agreed with the scope of practice granted to Dr Krishna by Dr Naidoo. Dr Krishna clearly did not work under 100% supervision in Toowoomba.

Dr Krishna agreed in evidence that, for whatever reason, Dr Naidoo "was away quite a lot"⁸¹

Dr Krishna also said that Dr Mullen got upset when he learned that Dr Naidoo was on leave and that Dr Mullen was upset that Dr Krishna was being left unsupervised. Dr Krishna maintained, however, that he operated within his scope of practice and tried to practice safely at all times.⁸² Dr Krishna did not agree that the scope of practice provided to him by Dr Naidoo was "too generous". He said:

"I think Dr Naidoo based my assessment on me doing these cases which he has seen and also from the references I received when I applied for the post while I was employed in another hospital in Queensland."

Dr Krishna did concede, however that he would have been happier with more supervision.

Like Dr Sharma, Dr Krishna spoke highly of the supervision afforded him by Dr Kwon, who worked in the Fraser Coast District for four months from late January 2005.⁸³

Dr Krishna said he felt he could not complain to Director of Medical Services Dr Hanelt about lack of supervision because he felt that Dr Naidoo was receiving approved leave and

⁷⁷ T6466

⁷⁸ T6469

⁷⁹ Statement Exhibit 482, evidence from T7329

⁸⁰ See in particular T7338, 7345

⁸¹ T6474

⁸² T6477

⁸³ T6481

he felt that the hospital administration expected he and Sharma to continue to perform their duties "as per privileges."⁸⁴

Dr Krishna did identify one procedure in which, for some reason Dr Naidoo did not attend to assist him when he requested it.⁸⁵

Dr Morgan Naidoo agreed in general terms with the summary of leave taken by him from January 2002 to September 2005, as follows⁸⁶:

2002 -	13 weeks
2003 -	11 weeks
2004 -	19 weeks

Dr Naidoo agreed that when he was on leave, Drs. Sharma and Krishna were mostly left unsupervised.⁸⁷ Dr Naidoo agreed that it was not an ideal situation. Dr Naidoo insisted that when he was at the hospital "*I was always available*".⁸⁸ Dr Naidoo's most recent statement dated 21 October 2001 suggests that Dr Naidoo did keep somewhat erratic hours. Given the standard hospital hours, it is difficult to see how Dr Naidoo was "always available" as he claimed. No doubt Dr Naidoo's residence in Brisbane and his medical difficulties have contributed to a less than ideal provision of supervision.

Dr Naidoo said that he allowed them a degree of independence "*based on the information I had received about their skills*".⁸⁹ Dr Naidoo said that he formed a view that Dr Krishna, in particular, was capable of doing most of the common trauma procedures that came through a busy hospital.⁹⁰ In order to reach this opinion, he relied upon the references of Dr Ivers, Dr Pun and Dr Wilson. Dr Ivers was glowing in his assessment, whereas Dr Pun and Wilson provided "*fairly neutral*" references.⁹¹ Dr Naidoo said that he also relied upon a telephone conversation with Dr Krishna which occurred before the job interview with Dr Hanelt, and he also relied upon the content of the interview which occurred in May or June 2002.⁹²

Dr Naidoo said that Dr Ivers had previously been his Registrar. He said⁹³:

"I called Dr Ivers and I spoke to him about Krishna's capabilities and was informed that he was capable of doing general Orthopaedic trauma, what we would call routine trauma that comes through."

Dr Wilson's statement supports Dr Naidoo's evidence on this point.

Dr Krishna filled out a request for clinical privileges in late 2003⁹⁴ and this was used partly as a basis for the creation of the scope of practice document dated 1 January 2004. Dr

⁸⁴ T6482

⁸⁵ T6492

⁸⁶ Exhibit 432

⁸⁷ T6591

⁸⁸ T6952

⁸⁹ T6592

⁹⁰ T6620

⁹¹ T6621

⁹² T6621

⁹³ T6624

Naidoo's attitude to the scope of practice can be best summarised in the following passage⁹⁵:

"...the document that I provided on their scope of service was not a certification of what they could do but based on what they indicated to me they had done in the past and my observations of some of the work based on their recommendations or their references they received from Toowoomba, and that's' Dr Sharma's references, and also based on their post-operative review of patients."

Dr Naidoo formed the view that Drs. Krishna and Sharma were skilled enough to make a clinical judgment as to what procedures they could deal with. Consequently, he instructed them that they were to treat patients within their skill level. Other patients would be transferred to another tertiary hospital.⁹⁶ Again, Dr Wilson's statement supports Dr Naidoo's position.

As for the conduct of outpatient Orthopaedic Clinics Dr Naidoo said⁹⁷

"we had two categories of new patients on our waiting list, one which only a consultant can see, either myself or Dr Mullens because of the nature of the problem the patient had. The second waiting list was...what we would consider of a minor nature based on the GP's referral and we would allocate some of those patients to assessed by the SMO's and then referred to us if they needed further assessment."

In agreeing that the supervision of the two SMO's was not ideal, Dr Naidoo pointed out⁹⁸ that often surgeries would be occurring concurrently, but in circumstances where the SMO's would "mostly" discuss any particular procedure with him. In respect of the "vast majority of clinics", Dr Naidoo said he was "on the floor, or Dr Mullen was on the floor" whilst those clinics were being conducted by either Drs. Krishna or Sharma.

Dr Naidoo was questioned about the single occasion on which Dr Krishna described a failure on the part of Dr Naidoo to assist him with a procedure he considered difficult. Dr Naidoo could not remember the incident, but suggested that, at a time when there was a shortage of junior staff available to the Orthopaedic department, he felt that Dr Krishna was asking for someone to assist him rather than asking for a consultant to attend.⁹⁹ It appears that this response was somewhat speculative, since he did not recall the incident.

1.10 Dr Morgan NAIDOO (HERVEY BAY HOSPITAL)

Senior Nurse Dale Frances Erwin-Jones said in evidence¹⁰⁰ that she expressed to the review team of Doctors North and Giblin, her view that Drs. Sharma and Krishna "...tried to

⁹⁴ Exhibit 433

⁹⁵ T6593

⁹⁶ T6593

⁹⁷ T6595

⁹⁸ T6597

⁹⁹ T6630

¹⁰⁰ T5401

work within their scope of practice, they knew what their limitations were. They unfortunately sometimes got into a position of not being able to control that, because once you get into the operating theatre, the surgery was more complex than they first understood it to be, that there was no supervision for them..." Nurse Erwin-Jones asserted in evidence that Dr Naidoo took an "inordinate amount of leave". She said that Dr Naidoo took at least 2-3 months per year in leave, being sick leave, study leave and annual leave.¹⁰¹ As a consequence, she said, the on call roster for Orthopaedic services was too demanding for those who remained available for duty, and a feature of the roster was the lack of supervision by a suitably qualified Orthopaedic specialist. Nurse Erwin-Jones complained generally that, as Nurse Unit Manager of the Operating Theatre, she was not informed of the extent to which particular practitioners needed particular levels of supervision for particular procedures.¹⁰²

Referring to Drs. Sharma and Krishna, Nurse Erwin-Jones said:

*"...from a professional clinical point of view, I would understand that they should have the availability of someone certainly within the District that should they get into a complex case, could come and assist. And that did occur on many occasions, where either Sharma or Krishna were performing surgery that again became more complex, and they did try to contact Dr Naidoo and on occasion Dr Mullins (sic) and were unable to contact him by phone, either they were unavailable in the District or they weren't willing to attend. There were various reasons. I can't give you specific dates, although a number of my staff could give you very clear examples."*¹⁰³

In fairness to Dr Naidoo, it should be pointed out that Nurse Erwin-Jones described him as being in the District from Monday to half day Friday "regularly"¹⁰⁴ but she pointed out that although Dr Naidoo was usually in the District during the week, he was not paid to be on call. The essence of Nurse Erwin-Jones' complaint was that an establishment of one Consultant and one "very, very part-time VMO" (Dr Mullen) was insufficient coverage for Hervey Bay Hospital. She estimated that at least two full Consultants and three or four VMO's was the necessary complement. If Drs. Sharma or Krishna were placed on call, a Consultant was never placed on call at the same time. Further, during standard working hours, she said that the specialist was regularly unavailable to supervise Drs. Sharma and Krishna in their work. This brought potential risks to Orthopaedic patients.¹⁰⁵

For his part, **Dr Hanelt** agreed that the ideal establishment of Orthopaedic staff was one which allowed a 1-in-3 roster. Dr Hanelt said that the current state of the roster was "too demanding".¹⁰⁶

Dr Sean Mullen gave evidence that during his time as a VMO at Hervey Bay Hospital, he developed strong concerns that Dr Naidoo's lack of supervision of Drs. Sharma and

¹⁰¹ T5402

¹⁰² T5403

¹⁰³ T5404

¹⁰⁴ T5405

¹⁰⁵ T5406

¹⁰⁶ T6757

Krishna allowed unsatisfactory medical situations to develop.¹⁰⁷ Dr Mullen described the situation as a failing in the administration of the hospital. Dr Mullen asserted that, at the time of the arrival of the two Fijian doctors in 2002, 2003;

*"Dr Naidoo was very rarely on call as the full-time Orthopaedic surgeon"*¹⁰⁸

During the evidence of Dr Hanelt, it was squarely put to him by Counsel Assisting that it was a "well known fact" that Dr Naidoo performed his "on-call" duties from Brisbane on occasions. Dr Hanelt replied that he was unaware of any such practice,¹⁰⁹ nor is there any evidence that such was the case.

Dr Mullen also gave evidence that the rostering of the two Fijian doctors was unacceptable to him because they were shown on the roster as being on call as the Consultant Orthopaedic Surgeon:

*"so they were basically being treated as specialist Orthopaedic Surgeons and they were autonomously operating, and there is a period of time where Dr Naidoo was absent on leave and they continued to do on call as the Orthopaedic Surgeon on call. There was no one supervising their surgery."*¹¹⁰

Dr Mullen described the situation as inappropriate and dangerous. Dr Mullen said that he raised this issue with the Director of Medical Services, Dr Hanelt, and that he "didn't get much satisfaction" over the matter. The tenor of Dr Hanelt's evidence on this point was that the lack of available orthopaedic specialists in the District meant that the two SMO's were inevitably required to perform on-call duties without the immediate supervision of a specialist. Dr Hanelt frankly acknowledged the difficulty, but said that, when Dr Naidoo was "in town available"¹¹¹, he made himself available to give them advice. He said he was aware of occasions when advice was given by Dr Naidoo in those circumstances. Nevertheless, patient safety depended upon the SMO's correctly determining whether they were competent to perform procedures unsupervised.

Dr Hanelt said that advice to an on-call SMO could also be obtained after hours from other hospitals as required, but he conceded that this was not "direct supervision".¹¹²

Dr Mullen said that, such were his concerns, that he eventually contacted the Australian Orthopaedic Association to voice his concerns.

Dr Mullen also said in evidence that he developed concerns that Dr Sharma and Krishna were conducting unsupervised outpatient Orthopaedic Clinics, where orthopaedic cases had to be assessed for the first time. His concern was that Dr Naidoo was not conducting these clinics in a supervisory role. Dr Mullen said that he raised these concerns with Dr

¹⁰⁷ T5449

¹⁰⁸ T5456

¹⁰⁹ T6758

¹¹⁰ T5457

¹¹¹ T6719

¹¹² T6720

Naidoo, who expressed the opinion that Drs. Sharma and Krishna were suitable to do the clinics unsupervised.¹¹³

Dr Naidoo agreed that Dr Mullen had raised concerns over the level of supervision of Drs. Sharma and Krishna.¹¹⁴ Naidoo agreed that full-time supervision of the two SMO's would have obliged him to work "impossible hours".

Dr Mullen said that such were his concerns he offered to make himself available for a one in two on call roster with Dr Naidoo. He said that he offered to do the roster free of charge if there was an issue of cost. He said that his offer was not accepted by Dr Hanelt.

*"I felt...that it was to do with the fact that there was a degree of conflict between the idea that people need to be credentialled to an appropriate level and between the concept that was being used in Hervey Bay where it was acceptable to have a lower standard of care because we were working in provincial area."*¹¹⁵

Dr Hanelt addressed in detail why Dr Mullen's offer was not taken up.¹¹⁶ He cited industrial reasons, and the fact that Dr Naidoo was not prepared to perform a 1-in-2 roster to match Dr Mullen. Dr Hanelt also suggested that his experience was that Dr Mullen was already unable to maintain his 1-in-4 commitment, so that a further sustained on-call commitment was unlikely to eventuate, in his view. Regrettably, Dr Hanelt's reasoning appears sound on this point. He also alluded to the fact that a shared on-call arrangement would break down when either specialist took leave.

Dr Dinesh Sharma was called upon during his evidence to distinguish between the supervision afforded him by a more recent locum Director of Orthopaedics, Dr Kwon, and that afforded to him by Dr Naidoo when he was the Director of Orthopaedics at Hervey Bay. One distinction made by Dr Sharma was that, Dr Kwon placed himself on call almost every day and he was available:

*"Whenever we needed him. That's seven days a week for that four months or how many months he was there."*¹¹⁷

Dr Sharma diplomatically said that Dr Naidoo was not available to the same extent as Dr Kwon. Dr Kwon also attended elective surgery cases in which Dr Sharma assisted him.

For his part, Dr Naidoo asserted that:¹¹⁸

"Dr Kwon didn't do any of the trauma and didn't do any of the administrative work that I do and certainly had more time on his hands than I did".

¹¹³ T5464

¹¹⁴ T6635

¹¹⁵ T5465

¹¹⁶ T6743, 6744

¹¹⁷ T5674

¹¹⁸ T6593

As to the question of rostering, Dr Sharma explained the differences he experienced under Dr Kwon compared with his experience under Dr Naidoo: ¹¹⁹

"We have an on-call roster that has got various people on-call and when Dr Kwon came in, he put his name on-call every day as the Consultant, so he was on-call every day. With Dr Naidoo, the on-call was shared by Dr Naidoo, Dr Mullen and the Senior Medical Officers. So not every time – or when the Senior Medical Officer was on-call, there was no consultant on-call."

Dr Hanelt suggested that Dr Kwon actively sought on-call work because he was planning to go overseas and *"it helps the wallet"*.¹²⁰

Dr Sharma also said that during daytime hours the emergency calls were shared between himself and Dr Krishna, but when Dr Naidoo was in the hospital and not on leave, he had no problem in obtaining Dr Naidoo's opinion on a particular matter.¹²¹

Dr Sharma could not recall any occasion when Dr Naidoo was supposed to be on duty but not in the hospital. Dr Sharma pointed out that Dr Naidoo may have been at Maryborough Hospital on any particular day, rather than at Hervey Bay.

As to the question of supervision of Orthopaedic Outpatient Clinic conducted by Dr Sharma, he said that on many occasions Dr Mullen was also taking Outpatient Orthopaedic Clinic, and so he was able to take Dr Mullen's advice on many occasions. As far as he was concerned, Dr Mullen was his supervisor on those occasions.¹²²

It was pointed out to Dr Sharma that Nurse Erwin-Jones claimed in her statement that Dr Krishna was *"rarely"* able to obtain assistance from Drs. Naidoo or Mullen. Dr Sharma said this was not his experience.¹²³

Dr Krishna also did not support that proposition.¹²⁴

He said that when Dr Naidoo was at work he was *"around all the time"*.¹²⁵

Dr Sharma disagreed with Nurse Erwin-Jones' statement that his requests for assistance were often refused or the supervising Doctor was unavailable.¹²⁶ Dr Krishna did not suggest in his evidence that he was often refused assistance.

In summary, Dr Sharma said that he felt free to consult with specialists in Brisbane, with Dr Naidoo when he was available, and with Dr Mullen when he was available.¹²⁷ Dr Sharma also said that he assisted Drs. Naidoo and Mullen on many occasions in theatre. Dr

¹¹⁹ T5674

¹²⁰ T6733

¹²¹ T5675

¹²² T5696

¹²³ T5696

¹²⁴ T6475

¹²⁵ T6479

¹²⁶ T5696

¹²⁷ T5696

Krishna gave evidence which was generally consistent on this aspect with that of Dr Sharma.

Absences of Dr Naidoo

Dr Hanelt said that he was aware of complaints from staff about Dr Naidoo's absences.¹²⁸ He checked with the HR section of Q Health and found that Dr Naidoo's leave was within his entitlements. Any reported absences by Dr Naidoo were checked. There was the added difficulty of having two hospital campuses in the District.

Dr Hanelt told the Commission that enquiries were currently underway to check Dr Naidoo's fuel dockets to determine whether the vehicle was being used in locations well away from Hervey Bay, such as to indicate perhaps unauthorised leave.¹²⁹ Dr Naidoo's latest statement does shed some light on the erratic hours kept by Dr Naidoo on some occasions.

It is respectfully submitted that the attempt to establish the possibility of unauthorised absences in Brisbane by the use of telephone records was rendered inconclusive after the receipt of the statement of Dr Andrew Christensen. Clearly, Dr Naidoo was undergoing Psychiatric treatment at New Farm on occasions when a call from his mobile telephone was picked up by the Kangaroo Point telephone tower. Parts of New Farm are located immediately opposite Kangaroo Point, across Brisbane River. It is respectfully submitted that a more detailed investigation by the appropriate authority is called for. There is no doubt that Dr Naidoo took significant amounts of authorised leave in the years 2003-2005, which left the Hervey Bay Hospital sometimes in considerable difficulty. Instances of persistent absenteeism without leave might raise questions of Official Misconduct, however such allegations may ultimately depend upon the reliability and completeness of Q Health leave records as maintained within the Fraser Coast Health District. It does seem to be in Dr Naidoo's favour that a number of witnesses, though complaining of his general absence from the District for periods of time, nevertheless acknowledge that there were many other occasions where he was available when contacted.

Any question of misconduct by Dr Naidoo, at this stage, remains unresolved.

1.11 Dr Anatole KOTLOVSKI (BUNDABERG BASE HOSPITAL)

Dr "Lucky" Jayasakera a staff surgeon employed at Bundaberg Base Hospital in early 2002, gave evidence¹³⁰ of surgical procedures in relation to two unidentified patients. He, in effect, claimed the operations were ineptly performed by an International Medical Graduate who was a locum to the Hospital for a period of about 2 months in early 2002. The medical practitioner was identified as Dr Anatole Kotlovsky.

Dr Jayasakera said in evidence that he at first agreed to Dr Nydam's request to supervise Dr Kotlovsky on condition that he was made aware of all patients upon whom Dr Kotlovsky was to operate. After the second operation, in which Dr Jayasakera alleged Dr Kotlovsky had ignored his instruction and performed a complex procedure unsuccessfully, Dr Jayasakera advised Dr Nydam that he was no longer prepared to supervise him.¹³¹

¹²⁸ T6731

¹²⁹ T6739

¹³⁰ T5962 *et seq*

¹³¹ T5965

Dr Kotlovsky strongly refutes the accounts given by Dr Jayasekera about these two procedures.

At the time of these events, it appears that Dr Jayasakera was Acting Director of Surgery at Bundaberg during the absence on study leave of Dr Sam Baker, the permanent staff specialist and then Director of Surgery for the Hospital.

Dr Nydam gave evidence ¹³² that the case of "Dr. Anatoli" was "a bit of a disaster". Dr Nydam said that Dr Jayasakera reluctantly agreed to supervise the Russian Doctor. ¹³³ Dr Nydam's account appears to be consistent with Dr Kotlovsky's statement that Dr Jayasekera appeared to resent having to supervise him on the state basis that he was not remunerated to do so. Dr Nydam said that, after hearing Dr Jayasakera's complaints and after hearing other suggestions about the Doctor's competence from other staff he was motivated to contact an unnamed Director of Surgery at a major Brisbane Hospital to enquire about the visiting surgeon. Dr Nydam said that he was told that Dr Kotlovsky should have been supervised, and that at that stage he was not in a formal training programme for surgery. Dr Nydam thereafter arranged for Dr Brian Thiele and Dr Martin Carter to supervise Dr Kotlovsky over a weekend during which Dr Jayasakera was on leave in Brisbane. ¹³⁴ Dr Nydam said that Dr Kotlovsky left Bundaberg Hospital at the conclusion of the locum period. Further requests for employment at Bundaberg from Dr Kotlovsky were refused. Dr Nydam said it did not occur to him to report his concerns to the Medical Board. ¹³⁵

After Dr Jayasakera was able to give more detail about the Russian Doctor during his evidence to the Inquiry, the Registrant was able to be properly identified and the Medical Board's file obtained. Briefly, that file reveals the following history:

- 1981 - Physician Diploma – Russian Medical University – said to be comparable to an Australian NVBS;
- 1986 – Specialist Paediatric Surgeon – Medical University.
- 1987 – Kandidat of Medical Science – Russian Medical University – said to be equivalent to an Australian PhD in Medicine;
- 1991 – First Grade Category Specialist Paediatric Surgeon;
- 27.02.96 – Conditional Registration in Queensland not taken up due to employment in Tasmania.
- 25.11.97 – Application for Conditional Registration to undertake Post Graduate Training in General Surgery and Neurosurgery at Townsville Hospital declined on the basis that the Board could not be satisfied that there was a genuine training position available;
- 23.12.97 Application for Conditional Registration declined until Applicant had passed the OSCE examination or the AMC MCQ examination;
- 27.10.98 Application for Conditional Registration to undertake a period of post graduate training and surgery approved at Ipswich Hospital for 12 months;

¹³² T4140 *et seq*

¹³³ T4180

¹³⁴ T4181

¹³⁵ T4181

- 08.08.00 Application for Conditional Registration at PA Hospital for 6 months approved.
- 26.02.02 **Application for Renewal of Conditional Registration approved, for an area of need for a period of 2 months at Bundaberg Base Hospital (SMO position in surgery) (25.02.02 – 12.04.02)**
- 22.07.03 Application for Special Purpose Registration at RBH approved from 21.07.03 – 18.01.04. Applicant to provide advice on progress towards AMC/FRACGP.
- 25.11.03 Application for Special Purpose Registration approved for RBH and Caboolture Hospital from 19.01.04 – 16.01.05. Registrant requested to advise the Board regarding progress towards AMC Certificate, FRACGP or Australian Specialist Qualification.
- 09.11.04 Application approved for a Special Purpose Registration as PHO in surgery at RBH from 17.01.05 – 16.07.05.
- 15.06.05 Registrant assessment form signed by Dr Barry O'Loughlin, Director of Surgery RBH – performance rated as "*consistent with level of position*" or "*better than expected*".

The Registrant is currently registered under s.135 *Medical Practitioners Registration Act* until 15 January 2006. The Board's file reveals that he has received the support of the following eminent surgeons in the State of Queensland:

- Professor Peter Woodruff;
- Dr Barry O'Loughlin;
- Dr Ian Martin; and
- Dr Daryl Wall.

It is submitted that the Board's file reveals evidence of appropriate supervision in a large tertiary Hospital by a range of eminent surgeons. It also reveals that Dr Kotlovsky is well regarded.

Dr Kotlovsky's statement attaches 12 references which strongly support the suggestion that he was well-supervised in the larger Brisbane hospitals.

The unanswered question in the history of this matter is as to whether, in early 2002, Bundaberg Base Hospital's Acting Director of Surgery, Dr Kees Nydam, received formal advice from the Hospital from which the locum came, namely Royal Brisbane Hospital, that the locum surgeon required supervision. As at the end of public sittings of this Inquiry, that question remains unanswered.

As to the proper identification of the two surgical cases which were the subject of criticism by Dr Jayasakera of Dr Kotlovsky, this has not so far been possible. The Commission has two conflicting accounts of the procedures.

It is submitted that this case may highlight a breakdown in communication between RBH and BBH as to the requirement for supervision of Dr Kotlovsky. The two surgical cases of which Dr Jayasakera complains perhaps should be the subject of further investigation, during which Dr Kotlovsky's explanations could be taken into account.

1.12 Dr Keith MUIR – (NAMBOUR HOSPITAL)

The Medical Board first received an Application for registration from this Registrant on 20 July 1992. That Application for registration included a Certificate of Good Standing from the State of New Jersey Board of Medical Examiners. Dr Muir was granted provisional registration to fill an area of need from 21 July 1992.

On 25 August 1992, the Board resolved that Dr Muir be granted registration as a specialist in psychiatry, in mutual recognition of his New Zealand specialist qualifications.

The Board's file shows that Dr Muir was employed at Cairns Base Hospital.

On 10 November 1993, the New Jersey State Board of Medical Examiners ordered that Dr Muir's licence to practice medicine in New Jersey was revoked. The allegation was that Dr Muir maintained a long term sexual relationship with two patients and failed to keep appropriate patient records for one of those patients. It is of some note that the papers later obtained from the New Jersey Board recite that the "moving papers" were sent to Dr Muir in Australia at his last known address. At this stage it is now known whether those "moving papers" were ever received by Dr Muir.

In any event, Dr Muir appears to have taken no steps to advise the Board of the order against him in New Jersey. It first came to the attention of the Board on the complaint of one Gayle O'Neill on 16 April 2005.

By April 2005, Dr Muir was working at Nambour Hospital.

On 3 May 2005 Dr Muir was required by the Executive Officer of the Board, Mr Jim O'Dempsey, to show cause as to why the same orders should not be made in relation to his Queensland registration.

This is a matter in which an International disciplinary sanction came to the attention of the Board well after the Registrant obtained Queensland registration.

It is respectfully submitted that no adverse inference could or should be drawn against the Board in this matter. The orders were not in place at the time that Dr Muir obtained his Queensland registration, and he appears to have failed to subsequently advise the Board of those subsequent sanctions.

(b) (i) Any substantive allegations, complaints or concerns relating to the clinical practice and procedures conducted by Dr Patel at Bundaberg Base Hospital.

SEE PART "C" OF THE BOARD'S SUBMISSIONS RE: CLINICAL PROCEDURES OF DR PATEL

(b) (ii) the employment of Dr Patel by Queensland Health.

(b)(iii) the appointment of Dr Patel to the Bundaberg Base Hospital.

(b)(iv) the adequacy of the response by Queensland Health to any complaints received by it concerning Dr Patel – THE MEDICAL BOARD DOES NOT WISH TO MAKE SUBMISSIONS

(b)(v) whether or not there were any reprisals or threatened reprisals made by any official of Queensland Health against any person who made the complaints referred to in (iii) above. – THE MEDICAL BOARD DOES NOT WISH TO MAKE SUBMISSIONS

(c) Any substantive allegations, complaints or concerns relating to the clinical practice and procedures conducted by other medical practitioners, or persons claiming to be medical practitioners, at the Bundaberg Base Hospital or other Queensland Public Hospitals raised at the Commission of Inquiry established by Commission of Inquiry Order (No. 1) 2005.

SEE PART "C" OF THE BOARD'S SUBMISSIONS RE: CLINICAL PROCEDURES OF OTHER PRACTITIONERS

(d) The appropriateness, adequacy, and timeliness of action taken to deal with any of the allegations, complaints or concerns referred to in (a), (b) and (c) above:

(i) within the Bundaberg Base Hospital

This Term of Reference is taken to be a reference to action taken with the Bundaberg Health District.

Zone Manager – Dan Bergin

The Zone Manager who is based in Brisbane, **Mr Dan Bergin**, whose responsibility covered the Bundaberg Base Hospital, said in evidence that he did not receive any information about concerns raised in relation to Dr Patel's competence, in circumstances where he would have expected to be provided with such complaints or concerns when they occurred.¹³⁶ Quite apart from the Bundaberg Hospital Management making a judgment that the point had been reached to advise Mr Bergin of concerns about the competence of Patel, there was a more formal means by which the Zone Manager received formal notification of concerns held by staff about the competency of a particular medical practitioner; the Sentinel Event Form. **Leonie Raven** gave evidence that the only Sentinel Event report she received during the relevant period was in relation to the death of Mr Bramich (P11).¹³⁷ To her knowledge, this incident was being investigated by Dr Keating. Even in relation to Adverse Incident Reports, Raven said in evidence¹³⁸ that she searched 900 such reports personally and found only a handful that involved Dr Patel.

The lack of formal reporting of concerns about Dr Patel may serve to explain why the Zone Manager, Mr Bergin, did not receive timely advice about concerns relating to Dr Patel. This

¹³⁶ T6006

¹³⁷ T2301

¹³⁸ T2301

lack of formal reporting no doubt contributed to any failure to detect concerns about Dr Patel and report them to the Medical Board.

It is submitted that, leaving aside the formal methods available to start to report serious concerns about the competency of Patel, the Commission has also received evidence pointing to a culture of dealing with any complaints internally, and not evoking the assistance of external agencies such as the Health Rights Commission or the Medical Board.

An overview of the evidence as to why there was no complaint to the Medical Board of Queensland re: the clinical practice of Patel, until February/March 2005.

Though Nurse Hoffman had formulated a detailed complaint about Patel, which she put to Darren Keating, by October 2004, the first time any such question was raised with the Board was in February 2005.

On 15 February 2005, representatives of the Queensland Nurses Union, Ms Judy Simpson and Ms Kym Barry met with Executive Officer James O'Dempsey concerning a Gold Coast practitioner about whom a written complaint had been made on behalf of some of the Union's members.

On 24 March 2005, Queensland Health formally drew the Board's attention to concerns regarding Dr Patel's surgical expertise and requested that the Board conduct an assessment of Patel's performance. The matter was referred to the Board's Complaints Committee for initial consideration.

At its meeting on 6 April 2005, the Board's Registration Advisory Committee noted that Patel's special purpose registration had lapsed on 31 March 2005 as he had failed to renew his employment contract with the Bundaberg Base Hospital. Queensland Health's area of need certificate had been withdrawn as a consequence.

After initial assessment, the formal complaints concerning Patel were referred to the Health Rights Commission on 3 separate dates, namely, 29 April 2005, 6 May 2005 and 10 May 2005.¹³⁹

Events then took a different turn with the announcement of Commission of Inquiry No. 1 of 2005 in May 2005.

The fact that the October 2004 formal complaints of Nurse Hoffman were not brought to the attention of the Board, even informally, until mid February 2005 is due, it is submitted, to measures being taken internally by Queensland Health to attempt to deal with the issues. The Board does not wish to make submissions upon those matters, but is content to leave such submissions to the relevant parties.

The appropriateness, adequacy, and timeliness of action taken to deal with any of the allegations, complaints or concerns referred to in (a), (b) and (c) above,

¹³⁹ O'Dempsey Statement Exhibit 28, paragraph 32

(ii) outside the Bundaberg Base Hospital.

Executive Officer MBQ, James O'Dempsey

The Executive Officer of the Medical Board, Mr O'Dempsey, said in evidence ¹⁴⁰ that he first became aware of concerns about Dr Patel on Tuesday 15 February 2005. Representatives of the Queensland Nurses Union ("QNU") attended at his office after the meeting had been originally scheduled for late January and again early February. Mr O'Dempsey said that the main subject matter of the meeting with the QNU representatives concerned another Registrant. As to Dr Patel, Mr O'Dempsey said:

"...later during this meeting the two representatives of the QNU indicated that their members were concerned about Dr Patel and were being interviewed that morning by Dr Gerry Fitzgerald. I enquired as to why these concerns have not been put into writing by way of complaint to the Board. I cannot recall the response. However the next day after this meeting I spoke to Board member and Chief Health Officer for Queensland, Dr Gerry Fitzgerald, and he told me that he had been in Bundaberg to conduct a clinical review into surgical services. He stated he was awaiting clinical benchmark data prior to finalising his report. He also stated that there may be recommendations or information concerning Dr Patel referred to the Board as a result of his review. I was aware that Dr Patel had submitted an application for registration renewal and a decision on that application was required by the end of May 2005. I mentioned to Dr Fitzgerald and the Registration Advisory Committee ("RAC") would appreciate receiving any information about Dr Patel prior to the end of May in order that the Committee could consider whether it was necessary to recommend that the Board impose conditions upon Dr Patel's registration. This was because conditions upon registration would be more readily imposed under the MPRA than under the HPPS Act..."

The Medical Board ultimately received a number of written complaints, being cc's of correspondence from Rob Messenger MP to the Minister for Health after Mr Messenger raised matters about Dr Patel in Parliament. Those complaints were referred to the Health Rights Commission on 29 April 2005, 6 May 2005 and 10 May 2005.

Under cross examination by Mr Allen for the QNU, ¹⁴¹ Mr O'Dempsey explained that there was a power under the *Health Practitioners (Professional Standards) Act*, s.51-53 to proceed with an investigation after a complaint has been received. Pursuant to s.63 of that Act, the Board can initiate an investigation of its own motion, but:

"it is difficult to refer a matter to the Board under 63 without having some substance there."

¹⁴⁰ O'Dempsey Statement paragraphs 30-32

¹⁴¹ T642,643

It was in this context that Mr O'Dempsey said in evidence that, as at the conclusion of the meeting with the QNU representatives on 15 February 2005, he was left with the understanding that a written complaint about Dr Patel might be received from the QNU itself, or it might be received from Dr Fitzgerald after he had completed his investigations, which Mr O'Dempsey understood were then and there underway in Bundaberg.

After the meeting with the QNU on 15 February 2005, Mr O'Dempsey said in evidence ¹⁴² that he spoke to Dr Fitzgerald at a Registration Advisory Committee meeting the following day to ascertain what investigations he was doing and what was the likelihood of a referral to the Board. Dr Fitzgerald indicated that he was doing a clinical audit but he stressed that it was not an investigation of Dr Patel:

"I asked him (Fitzgerald) to ensure that we got the information as soon as he had completed his report in order that the Board could make a decision on what action it needed to take...he (Fitzgerald) indicated to me that he would be completing the audit when he had the clinical benchmark data and he indicated that that was going to take 3-4 weeks".

In the interim, Mr O'Dempsey said that Dr Patel's Medical Board file was marked so that he could not get reviewed by the Registration Advisory Committee until the Board had the benefit of Dr Fitzgerald's report. At that stage, Dr Patel was registered up to the end of March 2005, and under the relevant legislation, the Board had a further 60 days to make a decision about whether it would re-register Patel.

Evidence of Dr Gerry Fitzgerald

In his statement dated 2 June 2005¹⁴³ Dr Fitzgerald confirmed that he discussed Dr Patel with Mr O'Dempsey and Mr Demy-Geroe of the Board on 16 February 2005, following his return from meeting staff at the Bundaberg Hospital:

"it was agreed that the RAC would defer consideration of Dr Patel's current application for renewal until I had the opportunity of finalising my investigation and report into clinical services at the Bundaberg Hospital".

On the question whether the Board should have acted immediately to suspend Dr Patel's registration, Dr Fitzgerald said: ¹⁴⁴

"there were a number of factors that mitigated against the Board being able to take immediate action to suspend Dr Patel's registration. Those were:

- *both Dr Patel and Dr Keating had given undertakings to me during my trip to Bundaberg on 14 February 2005 that he would cease doing complicated procedures at the Bundaberg Hospital and the*

¹⁴² T652

¹⁴³ Exhibit 225

¹⁴⁴ Exhibit 225, paragraph 69

- *patients requiring such procedures or who were seriously ill would be appropriately referred;*
- *at that time I had insufficient evidence to link Dr Patel's performance to particular adverse outcomes, the only information we had were complaints that Dr Patel was carrying out procedures outside his capacity and that of the hospitals."*

Dr Fitzgerald formally referred his concerns about Dr Patel to the Medical Board in a letter dated 24 March 2005.¹⁴⁵ Dr Fitzgerald said that his expectation was that the Board in its investigation would have looked at Dr Patel's clinical expertise but also obtained information on his behaviour to staff in terms of assessing whether he was guilty of any professional misconduct.

On 9 April 2005 the Minister for Health, Mr Nuttall, announced that a comprehensive review would be undertaken of safety and quality at the Bundaberg Hospital. Two days earlier, on Thursday 7 April 2005, the Director General of Health Dr Steve Buckland visited Bundaberg Base Hospital with the Minister to speak with staff. At the conclusion of that visit, Dr Buckland was told by Dr Keating that he had undertaken a Google search and had found that Patel had restricted registration in Oregon and had been withdrawn from the register in the State of New York.¹⁴⁶ Dr Buckland said he returned to Brisbane on the Ministerial Plane without mentioning it to the Minister and that night at home, he conducted his own Google search to confirm that Dr Keating had told him. Dr Buckland passed this information onto Dr Fitzgerald, who in turn passed it onto Mr O'Dempsey. Accordingly, on 8 April 2005, O'Dempsey directed Demy-Geroe to prepare a report on all of the aspects relating to the registration of Dr Patel.¹⁴⁷ That report was put before the Board on Tuesday 12 April 2005 and forwarded to the Minister's office on Wednesday 13 April 2005. It was tabled in Parliament on Tuesday 19 April 2005 by the Minister for Health. It is respectfully submitted that from the above chronology it can be demonstrated that, once the staff of the Medical Board of Queensland became aware of concerns relating to the registration and clinical practice of Dr Patel, its ensuing action was timely and appropriate.

(e) In relation to (a) and (d) above, whether there is sufficient evidence to justify:

(i) referral of any matter to the Commissioner of the Police Service for investigation or prosecution; or

The Board is aware that Patel and Berg are currently the subject of police investigations, and it has assisted Police in those investigations.

The Board has no further submissions.

(ii) action by the Crime and Misconduct Commission in respect of official misconduct or disciplinary matters.

¹⁴⁵ Exhibit "GF-13" to Exhibit 225

¹⁴⁶ T5507

¹⁴⁷ Exhibit MDG-3 to the Statement of Demy-Geroe, Exhibit 24

The Board does not wish to make submissions about the actions of persons employed in units of public administration, and as to whether there is sufficient evidence to constitute official misconduct.

(iii) the bringing of disciplinary or other proceedings or the taking of other action against or in respect of any person

- (a) Evidence of "Unsatisfactory Professional Conduct" pursuant to the Health Practitioners (Professional Standards) Act 1999 – Medical Practitioners.

Refer to "Part C" of the Board's submissions.

- (b) Evidence of "Unsatisfactory Professional Conduct" – persons employed in units of public administration who are medical practitioners.

Any referral to the CMC might result in a referral of such evidence, if it exists, to the Board in cases where "official misconduct" is not established, but where "*unsatisfactory Professional Conduct*" is detected.

(iv) amendments to the Coroners Act 2003 in relation to appropriate reporting of deaths caused by or as a result of a health procedure. – THE MEDICAL BOARD DOES NOT WISH TO MAKE SUBMISSIONS

(v) For the purpose of clarification and the removal of doubt, the phrase "substantive allegations, complaints or concerns relating to acts or omissions by current and former employees of the Queensland Department of Health which relate to clinical practices or procedures conducted by medical practitioners or persons claiming to be medical practitioners including acts or omissions relating to waiting lists both for patients referred to specialist outpatient's appointments and for surgical procedures. THE MEDICAL BOARD DOES NOT WISH TO MAKE SUBMISSIONS"

Ralph P Devlin
Kathryn McMillan
Counsel for the Medical Board of Queensland

Attachment "A"

CHRONOLOGY: Medical Board Registration of Patel

<i>Date</i>	<i>Registration Event</i>	<i>Evidence</i>
17/01/03	<p>Letter Wavelength Consulting, to Medical Board of Queensland ("MBQ") enclosing Dr Patel's ("Patel") original Application for Registration as a medical practitioner in Queensland (general and special purpose registration) and relevant documents.</p> <p>Documents submitted by Wavelength include:</p>	Exhibit 24 – MDG 12: Statement of Mr Michael Demy-Geroe dated 17 May 2005; T424
08/01/03	<p>1. Letter from Bundaberg Base Hospital (BBH), Dr Kees Nydam, A/Director of Medical Services to (MBQ). Requested that Patel be approved as a "temporary resident doctor", SMO.</p>	Exh 24 – MDG 13 T425
06/01/03	<p>2. Completed Application Form (M1) signed by Dr Patel (submitted by Wavelength).</p> <ul style="list-style-type: none"> • Last employment Kaiser Permanente in Portland, Oregon October 1989 to September 2002; • MBQ relies on Certificate of Good standing (COGS) or equivalent and history given by applicant; not practice to seek references from referees; practice not to contact previous employers. • Patel answered "No" to Question 3¹ and Question 4² 'Fitness to Practice' : false answers by Patel. Patel signed declaration that statements are true and correct. 	<p>Exh 24 – MDG 14 T425,683</p> <p>T425</p> <p>T426, 678,704-705</p> <p>T426</p>
Undated	<p>3. Form 1 "Area of Need Position Description" Bundaberg Base Hospital for position "Senior Medical Officer" (SMO) completed by the A/Director of Medical Services, Dr Kees Nydham</p>	Exh 24 – MDG 16 T429,430
06/01/03	<p>4. Form 2 "Summary of Experience Suitable to the Area of Need" completed by Patel.</p>	Exh 24 – MDG 17 T433, 434, 699
undated	<p>5. QH "Position Description" of "Senior Medical</p>	Exh 24 – MDG 18

¹ "...have you been registered under a corresponding law applying, or that applied, in another State, or Territory, or a foreign country, and the registration was affected either by an undertaking, the imposition of a condition, suspension or cancellation, or in any other way?"

² "Has your registration as a health practitioner ever been cancelled or suspended or is your registration currently cancelled or suspended as a result of disciplinary action in any State or Territory or in any other country?"

various	<p>Officer – Surgery”; reporting directly to Director of Surgery</p> <p>6. Patel’s Curriculum Vitae. Last position held noted as staff surgeon, Portland Oregon, from “October 1989 to September 2002”.</p> <p>Supporting documentation included:</p> <ul style="list-style-type: none"> • Bachelor of Medicine and Bachelor of Surgery, Saurashtra University, 11 March 1973; • Masters of Surgery, Saurashtra University, 20 March 1976; • Surgery Intern Certificate 01/07/78 – 30/06/79 and resident in Surgery 01/07/79 – 31/12/81; • Certificate of Residency in General Surgery, State University of New York, Buffalo 01/07/82 – 30/06/83; Chief Resident in Surgery 01/07/83 – 30/06/1084; • State of Oregon Board of Examiners Licence dated 14/04/89; • Certificate of Registration for Medical Physician and/or Surgeon dated 14/04/89 – 31/12/03; • Controlled Substance Registration certificate dated 22/04/02; • American Board of Surgery Certificate dated 18/10/96. 	<p>T429-431, 433-436</p> <p>Exh 24 – MDG 19 T434,435 T679,688,699,693</p> <p>Exh 24 – MDG 15 T427, 418, 428,429</p> <p>T427,418</p> <p>T427</p> <p>T427</p> <p>T427</p> <p>T427</p> <p>T427</p> <p>T427</p> <p>T427,693,694</p>
17/01/2002	7. Application for Area of Need Certification, completed and signed by Kees Nydam A/Dir Med Services.	Exh 24 – MDG 16 T429
21/01/03	Fax Wavelength to MBQ enclosing faxed copy Patel’s “Verification of Licensure”, or equivalent COGS.	Exh 24 – MDG 22 T436,437 T683
29/01/03	<p>Letter Wavelength to MBQ enclosing original “Verification of Licensure” from Board of Examiners, State of Oregon, stating “Standing: PUBLIC ORDER ON FILE : SEE ATTACHED”. Checked by Ms McMullin (did not notice these words and inquire further).</p> <p>Recruiting firm, Wavelength also did not notice the missing attachment.</p>	<p>Exh 24 – MDG 23 T436-438 T683, 697,698</p> <p>T438,</p>
03/02/03	Registration Checklist completed by Ms McMullen, Registration Officer. Indicates Ms McMullen’s belief that all requirements were complete; “Certificate of Good Standing” ticked “Yes”, signifying it was present and valid.	Exh 24 – MDG 24 T438

Jan/Feb 2003	Mr Demy-Geroe, Deputy Registrar, states during January/February 2003 only 1.4 staff to process as many as 200 special purpose applications during peak periods of activity in Registration unit. [Staff numbers increased to 4 in special purpose registration unit]	T415,421,422 T416
03/02/03	Registration Advisory Committee (RAC) Meeting - Mr Demy-Geroe, reviewed the registration application of Patel; considered suitability of Patel to position description (SMO). Raised issue that Patel not be represented as a specialist. RAC recommended that the Patel's special purpose registration be approved (refer RAC report dated 3 Feb 2002/3).	Exh 24 – para 34 T438, 439 Exh 24 – MDG 25 T439
Feb 2003	Workload of RAC meeting fortnightly, during this peak period was 150-200 applications. [RAC workload now reduced since delegation of renewal applications for Area of Need]	T416 T502
11/02/03	MBQ meeting - Patel's application for special purpose registration (s135) was approved for period 12 months from 1 April 2003 to 31 March 2004, as SMO at BBH, per RAC recommendation. Approval subject to Patel completing requirements of registration (interview).	Exh 24 – MDG 26 T440
31/03/03	Dr Waller interviewed Patel; MBQ letter listing all documents presented by Patel including a COGS (Dr Waller not required to check COGS or equivalent). Dr Waller signed certification stating Patel complied with the provisions of the <i>Medical Practitioners Registration Act 2001</i> and that he "possesses such qualifications as would, upon proof thereof satisfaction of the Board, entitle him to be registered".	Exh 24 – MBQ 29 T441
01/04/03	Letter MBQ to Patel granting special purpose registration - section 135, for the period 1 April 2003 – 31 March 2004, to practise as SMO in surgery at BBH; Patel provided a Certificate of special purpose registration.	Exh 24 – MDG 30 T441 Exh 24 – MDG 31 T443
03/12/03	Letter MBQ to Patel advising his special purpose registration expires 31 March 2004; and "documentation submitted in respect of an initial application need not be resubmitted" ie. COGS	Exh 24 – MDG 32 T443, 444
11/12/03	Letter BBH (Dr Keating) to MBQ enclosing:	Exh 24 – MDG 33

01/12/05	<ul style="list-style-type: none"> • Form M1: Application for Special Purpose Registration for further 12 months until 31 March 2005; Patel answered "No" to Q.3,4 Fitness to Practice (refer footnotes 1 & 2); • Form 1 (Area of Need Position Description:, completed by employer/signed by Dr Keating); "Director of Surgery:...his performance rates as excellent" • Form 2; (Summary of Experience: completed by Patel); • Assessment Form and payment: Dr Keating assesses Patel's performance as "Performance better than expected" in 9/11 categories, including clinical skills. 	T444, 445 T447 T447 T445
15/12/03	<p>Registration Checklist completed by registration Officer, indicating complied with all requirements.</p> <p>RAC meeting recommended that Board approve Patel's application for special purpose registration for further 12 months.</p>	Exh 24 – MDG 34 T447 T448
27/01/04	MBQ resolved to approve Patel's special purpose registration under s135 for 12 month period from 1 April 2004 – 31 March 2005.	Exh 24 – MDG 35 T448
09/03/04	<p>Letter MBQ to Patel granting special purpose registration for a further 12 months until 31 March 2005.</p> <p>Letter notified cancellation of registration where "materially false or misleading representation or declaration"; advised to notify MBQ if any registration is affected by "disciplinary action".</p>	Exh 24 – MDG 37 T449 T449
Mid 2004	Nurse Michelle HUNTER, conducted "google search" after "a number of disasters involving Dr Patel" and noted that one of the number of Jayant Patels, "had negligence cases against his name". She informed the "nursing staff" but was "not sure" if she told the Nurse Unit Manager, commenting that "she would have heard". Did discuss the google search with Toni HOFFMAN on 4 January 2005 regarding P26.	T2041 - T2045
31/01/2005	Letter Queensland Health (Keating) to MBQ advising BBH has extended Patel's contract to 31 March 2009	T450
07/02/2005	Patel: Application for Renewal of Special Purpose Registration, including relevant Forms (M1, 1,2 and assessment)	Exh 24 – MDG 38 T451
14/02/2005	RAC meeting considered the renewal application per Checklist. Decision deferred due to matters raised on 15 April 2005.	Exh 24 – MDG 39 T452

15/02/2005	Meeting Mr O'DEMPSEY and Queensland Nurses Union representatives. Informal concerns verbally raised regarding a Dr Patel. Mr Demy-Geroe deferred Patel's renewal application until substantive evidence from FitzGerald or QNU.	T453 T454
16/02/05	Dr FITZGERALD discussed with Mr O'DEMPSEY and Mr Demy-Geroe that concerns had been raised re Dr Patel, with some substance ; advised MBQ not to proceed with renewal application. Dr Fitzgerald received undertaking from Patel and Dr Keating that the complex surgery would not be undertaken.	T453, 472 T6145, 4146
22/03/05	Rob Messenger MP raised allegations against Patel in Parliament per Toni Hoffman letter dated 22 October 2004.	T454
23/03/05	Letter Rob Messenger MP to MBQ re formal complaint of Dr Patel.	T473
30/03/05	Faxed letter Dr FitzGerald to MBQ formally requesting an assessment of Dr Patel, referring to results of his clinical audit.	T454, 6146
31/03/05	Telephone MBQ to Leck who confirmed Patel did not accept further employment contract with Bundaberg Base Hospital from 1 April 2005.	T455
01/04/05	Faxed letter BBH (Leck) to MBQ confirming calls (x2) that Patel's contract had ceased and his employment had ceased and that Patel intends to leave Australia on 4 April 2005.	Exh 24 – MDG 41 T456 475
05/04/05	Email QH to Board advising Area of Need for that position at BBH had been cancelled.	Exh 24 – MDG 42 T456
06/04/05	Internet search (of "Jayant M Patel") by Dr Darren Keating re Patel's disciplinary history in US (Oregon and New York Medical Board websites), discovered restrictions on Patel's licence due to "gross negligence" relating to 3 operations: peritoneal anastomoses, liver resection and pancreatic operations;	T 6812
07/04/05	Dr Keating informed Dr Fitzgerald re Patel's disciplinary history.	T6813
07/04/05	Dr Fitzgerald stated he advised Mr O'Dempsey of suggestion that Dr Patel might have been restricted in medical practice overseas and requested that this be investigated.	T4210
08/04/05	Mr Demy-Geroe conducted internet search and investigation regarding Patel's disciplinary history in Oregon, and to prepare a detailed report.	T456

13/04/05	MBQ report tabled in Parliament re circumstances of registration of Patel.	T456
13/04/05	Mr O'DEMPSEY met with The Honourable G NUTTALL MP, Minister for Health briefing him on the Patel's restricted registration in Oregon.	T5374
18/04/05	Report to Health Minister on remedial actions re special purpose registrants dated 19 April 2005.	Exh 25 JOD-14 T502

- Refer to MBQ statements:

1. Mr Michael Demy-Geroe dated 17 May 2005 ;
2. Mr James O'Dempsey dated 17 May 2005;
3. Dr Mary Cohn dated 17 May 2005.

ATTACHMENT "B"

"Issues of concern

Although I have found that that Dr Maree should not face criminal charges in connection with the death of Ms Sabadina that does not mean I consider he was competent to safely carry out the duties of the position he held. Some of the numerous failings that I have listed above could easily have resulted in the death of a patient. Therefore, unless the systematic deficiencies that allowed for the appointment of a doctor ill-equipped to hold such a responsible position are addressed, deaths in future are foreseeable.

I therefore consider it within the scope of the inquest to examine how Dr Maree came to be appointed Medical Superintendent of the Charters Towers Hospital and what action the relevant authorities took when his deficiencies became apparent.

The recruitment of Dr Maree

The position of Medical Superintendent of the Charters Towers Hospital had been vacant since September 1999. Attempts to recruit an Australian trained and/or registered doctor to the position, which commenced in June 1999, were unsuccessful: indeed no applications were received. So, in May 2000, an international recruitment firm, which had previously acted for Queensland Health, was engaged. This firm nominated Dr Maree as a possible candidate and his contact details and curriculum vitae were supplied. The Queensland Health Area District Manager, Mr Peter Sladden then convened a selection panel consisting of himself, the Acting Medical Superintendent, Dr David Row, and the District Human Resource Manager, Mr Trevor Healy. The panel agreed that Dr Maree might be suitable for the position and he was interviewed by telephone. During the interview Dr Maree was asked (what the court was told were) some fairly simple clinical questions and to expand upon the description of his previous experience. The nature of the position was explained to him. He supplied two written references and Dr Row was commissioned to speak with the referees and report back to the panel.

Mr Sladden and Mr Healey say that after the telephone interview, the panel discussed Dr Maree and they unanimously concluded that he was suitable for the position, subject to referee checks. Dr Row claims he had reservations about the extent and recency of some of Dr Maree's experience, that he was suspicious of his enthusiasm for management and, what Dr Row considered to be, Dr Maree's over confidence in his clinical abilities. Dr Row checked with one referee who was effusive in his praise for Dr Maree. This, he said made him suspicious of the referee's veracity and caused him to consider that contacting the other referee would be pointless. Dr Row says he continued to have misgivings about recruiting Dr Maree which he expressed to Mr Sladden but he says that he was overridden and his concerns were ignored. When giving evidence at the inquest, Dr Row says Mr Sladden told him that Dr Maree would be appointed despite Dr

Row's concerns because Dr Maree was cheap. Dr Row sought to explain this alleged comment by referring to another plan he was at the time apparently considering. This plan involved offering a permanent appointment to a senior medical officer who had recently been recruited on a temporary, short term contract and allowing Dr Row to continue to act as medical superintendent while the search for a permanent appointment continued. Dr Row believed this would involve paying a lump sum to the recruitment agency that had provided this other doctor and that it was this payment which Mr Sladden was seeking to avoid by insisting on Dr Maree being appointed. Mr Sladden and Mr Healy deny any such conversation took place and deny that the plan conceived by Dr Row would have been more expensive than recruiting Dr Maree. I accept their evidence and I reject Dr Row's claim that he was unduly pressured into agreeing with the appointment of Dr Maree. I think a more accurate account of Dr Row's expressed views at the time of Dr Maree's appointment can be found in his interview with Drs Johnson and Farlow in which he is paraphrased as saying, "Dr Row acknowledges he provided advice to the District Manager at that point that Dr Maree did appear suitable for appointment. He expressed that he had some reservations at that stage, but that the appointment should proceed."

Having rejected the allegation that the appointment of Dr Maree was compromised by inappropriate considerations does not mean that I consider that it was made in accordance with the policies that applied at the time. Those policies required the selection panel to weight selection criteria and to then score candidates against them. They required documentation that clearly explained the decision making process in a form that allowed it to be reviewed.¹ None of that happened in this case. The panel asked Dr Maree a few general questions about his knowledge and experience and recorded their deliberations in a page and a half of untidy notes. There was no signed recommendation and no written justification or explanation of the appointment. These shortcomings made it difficult for the inquest to assess whether a merit based selection process had in fact been employed.

The best the court could do in these circumstances was to rely on the opinion of Dr Johnson, a medical executive from Townsville General Hospital, who gave evidence about his investigation of the various allegations made against Dr Maree. Dr Johnson said that based on the curriculum vitae and the references he would have been prepared to employ Dr Maree as a medical superintendent and that subject to the process confirming the experience outlined in the application he would have had no concerns. Dr Farlow also said that had it not been for his experience on the credentialing committee, which has led him to be less accepting of claims made by some overseas applicants, he, too, would have considered Dr Maree a suitable candidate. "I think their process of interview and referee checks was actually beyond reproach,"² he said. Therefore, although it is easy to validly criticise the process by which Dr Maree was chosen, the evidence

¹ see exhibit 48

² transcript day 5 p49

suggests that the decision itself was not unreasonable. That assessment seems inconsistent with the evidence demonstrating that Dr Maree's clinical abilities were seriously inadequate. The resolution of this apparent conflict, in my view, lies in what happened, or did not happen, when Dr Maree came to Australia in August 2000.

The induction/orientation of Dr Maree

After Dr Maree arrived in Queensland, there were three processes that could have identified his shortcomings and provided an opportunity for them to be addressed – all failed.

Because he had secured a position with Queensland Health the Medical Board granted Dr Maree conditional registration. All that it required of him was proof that he had such qualifications as would entitle him to registration and to be satisfied that he complied with the provisions of the Medical Act 1939. The Board satisfied itself of these matters by having Dr Maree interviewed by a senior doctor from the Townville Hospital who then wrote to the Board certifying that Dr Maree met these conditions for registration. It seems this process did not involve any assessment of Dr Maree's suitability for the position he was about to fill nor any review of his level of competence.

The next opportunity for protective or remedial action came when Dr Maree attended at the Townville Hospital for a week in early September. In his statement, Mr Sladden says of that event, "During the first week he attended orientation sessions at the Townsville Hospital.." ³ However, Dr Callanan says that during this period Dr Maree really just met a few people who he could be expected to have contact with after he took up the position at Charters Towers. He did not even attend the anaesthetics department. Had he done so it would have been a simple matter to ensure that he was familiar with the machines that he would be working with in Charters Towers. If it became apparent that he was so unfamiliar with the equipment that he was unsafe, other more interventionist action could have been taken. None was. It was an opportunity lost.

The next procedure that should have acted to alert his superiors to Dr Maree's limitations was the privileging and credentialing system. The purpose of the credentials and clinical privileges process is said to be to ensure "that only those practitioners who are appropriately qualified, trained and experienced undertake clinical care"⁴ in Queensland Health facilities. The process involves peer review by a committee of clinicians which assesses the doctor's credentials and makes decisions about what procedures he/she will be privileged to undertake.

When he took up the position at Charters Towers, Dr Maree was told that he would need to make application to have his credentials recognised and his privileges delineated but it never happened. In the meantime he operated on

³ exhibit 18 para 8

⁴ exhibit 39 p5

what have been referred to as "implied privileges" that accrued on account of his position. That may have been acceptable had Dr Maree been a junior doctor working under the close supervision of a more experienced practitioner. It was obviously problematic when he was the "boss" of the hospital and expected to give clinical leadership to the other two doctors employed there.

After being reminded of the need to do so, Dr Maree made application to the Privileges Committee on 8 December. He was suspended two days after Ms Sabadina's death and did not return to work before he resigned in April 2001. The process was therefore never completed.

It is apparent from this brief description of the application of these policies and practises to Dr Maree's case that they were totally inadequate to ensure the competence of someone who was placed unsupervised in a highly responsible position. It is ironic that the most telling condemnation of those processes came from Dr Maree himself when he wrote to the Queensland Health Northern Zone Manager in response to an invitation to show cause why disciplinary actions shouldn't be taken against him. He said:-

The selection panel acted incompetently and Dr Row's behaviour is again shown to be questionable. I did not qualify for the position and should not have been granted clinical privileges. The orientation process I went through was very superficial and inadequate. Lastly it is the responsibility of Queensland Health to ensure appropriate candidates are placed in positions.⁵

Having reviewed all of the evidence it is difficult to disagree with his assessment. The response to Dr Maree's apparent shortcomings and the death of Ms Sabadina

Dr Row returned from leave to Charters Towers on the day of Ms Sabadina's death. He had already composed a letter to Mr Sladden detailing numerous concerns he had about Dr Maree's practice. That letter is dated 17 December 2000. It makes reference to Ms Sabadina's death in a handwritten post script. The day after Ms Sabadina's death, Dr Row also wrote the Medical Board advising them of the death and requesting the Board review Dr Maree's registration. On 19 December 2000, the Board communicated with Queensland Health and was advised that Dr Row's numerous allegations were under investigation and that Dr Maree was to be suspended from practice.

As has been mentioned earlier, over the next two months, Drs Johnson and Farlow undertook a comprehensive investigation. Their report recommended disciplinary action be taken by Queensland Health and that the report be referred to the Medical Board.

On 23 February 2001 the Board was given a copy of the report. On 22 March the Board wrote to Dr Maree calling on him to show cause why his registration

⁵ Dr Maree's response Mr Mehan to Johnson and Barlow report at p53

should not be suspended or his right to practice made subject to conditions. On 24 March he provided the Board with a copy of his response to the Johnson Barlow investigation report. On 27 March Dr Maree wrote to the Board advising of his intention to resign from Queensland Health and his intention not to practice medicine again in Australia.

On 6 April Dr Maree tendered his resignation effective from 17 April. This was conveyed to the Medical Board. On 27 November 2001 the Medical Board resolved to discontinue its investigation of Dr Maree's suitability for registration as he had resigned his position with Queensland Health which employment was a condition of his registration. The Board therefore made no finding in relation to the allegations against Dr Maree. The Board says it wrote to its equivalents in the other Australian states and New Zealand advising that Dr Maree was no longer registered to practice in Queensland. Dr Cohn, the current chair of the Board, told the inquest that the decision not to advise the home country of the doctor involved of the concerns about him was consistent with the Board's practice at the time but that now such advice would be given to any country in which it was thought the doctor in question might seek to practice.

When questioned at the inquest as to why the Board did not make a finding in relation to the allegations against Dr Maree, Dr Cohn, said that the decision was based on Dr Maree having left the country and was influenced by the fact that it had a large number of investigations to deal with at the time. She also said that the Board was waiting for other inquiries such as this inquest to be completed before taking action, to avoid parallel inquiries occurring.

In a submission by the solicitors for the Board, it was argued that no good purpose would have been served by the Board taking further action in this case as the most the Board could have done was to de-register Dr Maree and that had already happened as a result of his resignation. Further, they suggest that no disciplinary prosecution in the Health Practitioners Tribunal would have been likely to succeed in the absence of evidence of criminal negligence and as I have found such evidence is not available in connection with the death of Ms Sabandina, a disciplinary charge based on allegations of poor practice standards would not have succeeded. I shall respond to these submissions shortly.

Recommendations

Pursuant to s43(5) of the Act I am authorised to make riders or recommendations designed to reduce the occurrence of similar deaths to the one investigated by this inquest. In accordance with that power I make the following observation and recommendations.

The assessment of overseas trained doctors and the special needs of rural medicine.

This inquest focused solely on the cause and circumstances of the sad death of Kathryn Sabadina. However, it was apparent from the material admitted into evidence that in the three and a half months Dr Maree practiced in Charters Towers this fatal event was far from his only problem of a clinical nature. While I have no jurisdiction to look into those other allegations, I received sufficient information about them from reliable sources that had properly investigated those matters to enable me to conclude that the processes by which Dr Maree was selected, registered to practice and assessed as suitable for the position of Medical Superintendent were flawed.

I heard compelling evidence concerning the challenges facing a senior rural practitioner and the difficulties Queensland Health faces when trying to recruit doctors sufficiently competent to attend to these very wide ranging and demanding roles: experience in anaesthetics, obstetrics and general surgery is not something one would normally expect of a general practitioner. I was told that the relevant colleges are considering the creation of a discrete specialty of rural medicine. It is hoped that if this reform proceeds, general practitioners who currently need to leave the bush to train in a specialty at a metropolitan teaching hospital never to return, might be convinced that there is a satisfying career path for them in regional hospitals. It was also suggested that clinical networks of the various specialties could assist in raising the standards of those who need to practice across the specialties and could effectively contribute to an increase in the standard of care in regional hospitals. At least one well qualified witness suggested that until these reforms are in place, greater restrictions should be placed on the type of procedures undertaken in regional hospitals when emergencies are not involved.

I also received evidence that many of those systems and processes for assessing and credentialing practitioners have been reformed and that under current arrangements, the deficiencies in Dr Maree's abilities would be identified and responded to were he to be recruited to a similar position today.

I have considered whether I should make recommendations concerning these issues, to re-enforce the improvements that have been undertaken and to give greater impetus to those still gestating. I have concluded that having regard to the attention being given to these issues by the Commission of Inquiry into the Bundaberg Base Hospital and the review of Queensland Health systems being undertaken by Mr Peter Forster it would be inappropriate for me to seek to address such wide ranging issues on the basis of this one case that occurred five years ago. The issues are so important and complex that it is appropriate that the widest possible evidence base be considered when seeking to address them".