

CHARITYPUB01280
02/03/2011

CHARITY
pp 01280-01301

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION CHARITY

Reference: Operation E10/0035

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 2 MARCH 2011

AT 10.05AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

MR ALEXIS: Commissioner, we have Dr Marsden on standby in Laos. Can I just deal with two short preliminaries. Firstly, yesterday the Commission received as Exhibit 83, Dr Campion's statement. He's not required for cross-examination. Secondly, the Commission received a statement from Ms Pamela Maffullo, who was the manager of the internal audit unit at the Royal Hospital for Women, that was Exhibit 84. I need to note that in relation to the file note of Ms Maffullo of a conversation she had with Ms Lazarus on 6 February, 2009 and the transcription of that telephone file note is at page 263 of Exhibit 1. In that file note it is said, "I noted that SL said at interview that files were at home". In relation to that reference can I make two concessions, 1) there was only one interview involving Ms Lazarus and that was the interview that occurred on 3 February, 2009 in respect of which Exhibit 1 contains the typed notes commencing at page 252. The second matter is that the notes of the interview do not expressly record Ms Lazarus stating that her files were at home. Now as I understand, having made those two concessions, Ms Maffullo is not required for cross-examination either.

THE COMMISSIONER: That is correct Ms Soars?

20

MS SOARS: That is correct, Commissioner.

THE COMMISSIONER: Yes, thank you.

MR ALEXIS: As I say, Commissioner, Dr Marsden is on standby and as I understand all I need to do is indicate that we're ready and he will be obtained on the telephone line.

THE COMMISSIONER: And just as a, is he going to, does he get sworn in? I don't think that's necessary, but Ms Soars, do you have any comment to make on that?

30

MS SOARS: Only that I, was it, was Mr Pleiksna sworn in through your associate?

THE COMMISSIONER: Yes, he was. But he, we could see him and he could see us.

MS SOARS: I see, it's just - - -

40

THE COMMISSIONER: I mean I'm not sure if that makes a difference. I have no objection to swearing him in.

MS SOARS: I would prefer to follow that procedure if we could, Commissioner.

THE COMMISSIONER: Very well.

MS FURNESS: Commissioner, I appear for Dr Marsden.

THE COMMISSIONER: Yes, thank you Ms Furness. And do you need a section 38?

MS FURNESS: I will be seeking a section 38 declaration on his behalf.

THE COMMISSIONER: Does he know what it is?

10 MS FURNESS: Yes. My instructing solicitor has spoken to him by phone.

THE COMMISSIONER: I beg your pardon?

MS FURNESS: My instructing solicitor has spoken to him on the phone.

THE COMMISSIONER: Yes, thank you. And just as a matter of clarification, does this mean, we'll all just have to speak and Dr Marsden will hear what we're saying?

20 MR ALEXIS: We hope so, yes.

THE COMMISSIONER: And, and how will we hear what he's saying? Where is there, is there, is there a microphone?

MR ALEXIS: I have a telephone on the bar table which is connected to a microphone which as I understand will amplify his voice so that all can hear in the hearing room.

THE COMMISSIONER: Very well.

30 MR ALEXIS: And he ought to be able to pick up the questioners voice clearly if they speak clearly into this microphone in front of me.

THE COMMISSIONER: Yes. And, and negate by themselves (not transcribable)

MR ALEXIS: Yes, yes. Dr Marsden, you there, sir?

DR MARSDEN: Good, good.

40 MR ALEXIS: Yes, good morning, Dr Marsden. Before we commence your examination this morning - - -

DR MARSDEN: Sorry, repeat please.

MR ALEXIS: Before we commence your examination this morning we will need to just take you through the formal process of having you take an oath or an affirmation in relation to the evidence that you're about to give and

perhaps in that regard I'll now let the Commissioner speak and step you through those arrangements.

THE COMMISSIONER: Dr Marsden, this is the Commissioner speaking. Do you hear me?

DR MARSDEN: Yes, not very well I'm afraid, but I can.

10 THE COMMISSIONER: Well, if at any point in time you can't hear please interrupt and tell us?--Yes.

The first thing that needs to be done is to swear you in or ask you to affirm that you will tell the truth. Which of the two would you prefer?--I affirm, thank you.

Yes. My associate will speak to you on the telephone and just say something to you about the affirmation and if you will simply reply in the appropriate way which I am sure you will understand?---Right.

20

<DONALD ERIC MARSDEN, affirmed via telephone [10.10am]

THE COMMISSIONER: Now, Dr Marsden, I have to make an order that is of protection to you under certain provisions of the Independent Commission Against Corruption Act. The point is that the evidence can't be used against you in criminal or disciplinary proceedings save to the extent that it's contended that you haven't told the truth before this Commission should somebody be of that mind. But the general purposes that the order is for your protection and I understand that your counsel wishes me to make that order. So what you will now hear is me making that order. You need not respond. Do you follow all of that?---Yes.

Pursuant to section 38 of the Independent Commission Against Corruption Act I declare that all answers given by Dr Marsden and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document or thing produced.

20

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT ALL ANSWERS GIVEN BY DR MARSDEN AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

30

THE COMMISSIONER: Now, Dr Marsden, Mr Alexis who is counsel assisting the Commission will now proceed to ask you some questions? ---Right.

MR ALEXIS: Thank you, Dr Marsden. Can I just confirm your full name is Donald Eric Marsden?---Yes.

40 And you before your retirement in March 2010 was the former Deputy Director of the Gynaecological Centre at the Royal Hospital for Women? ---Yes.

Thank you. And is it the case that you've signed a statement of evidence dated 29 June, 2010 for the Commission?---Yes.

I'm just going to show the Commissioner a copy of your statement and would you confirm that you have available to you in Laos a copy of your statement of evidence?---I do.

And it has the date that I've just indicated 29 June, 2010?---Yes.

And is the content of that statement true and correct?---Yes, I've been looking through it again and there are a few things where wording worries me a little bit in retrospect but (not transcribable) correct.

10

What we'll do, sir, is when we get to the particular topic I'll ask you to draw to our attention any wording issues that you have, do you follow?---Thank you.

Thank you. I'll now tender the statement of Dr Marsden, Commissioner.

THE COMMISSIONER: Yes. The statement of Dr Marsden is Exhibit 92.

20 **#EXHIBIT 92 - STATEMENT OF DR MARSDEN**

MR ALEXIS: Thank you. Now, Dr Marsden, I want to come to firstly the occasion that you refer to in paragraph 10 of your statement when Professor Hacker told you that a university student had approached him about wanting to undertake some clinical trials involving the early detection and diagnosis of cervical cancer at the hospital. Now, after Professor Hacker told you that did you ever meet Sandra Lazarus the student to which he was referring?

30

---The only time I can remember meeting her (not transcribable) at a lunch (not transcribable) somebody who was leaving and she sat opposite me and for some reason I remember that but that's the only time I remember her.

Can you remember the colleague's name?---No, but it was a colleague that, who was going overseas.

And can you recall as best you can whether or not that lunch occurred in the 2007 year or the 2008 year or some other time?---Oh, I don't remember when at all.

40

Was it shortly after Professor Hacker spoke to you about this student wanting to undertake some trials or - - -?---Oh, I don't actually know when he spoke to me. I don't know at all.

Now in late 2007 and during the 2008 year - - -?---Mmm.

- - - how many days a week did you work at the cancer centre at the Royal Women's Hospital and what were your usual hours in that respect?---I worked every day and I was usually there from about 8.00am or 7.30 or

8.00am through until about (not transcribable) except on days where I went to either Canberra or Wollongong to work.

And - - -?---That was once, roughly once every (not transcribable) at that time to Canberra and once every two weeks to Wollongong.

10 All right. Thank you. Now, in your statement at paragraph 11 you tell us that you supplied Sandra Lazarus with a copy of your curriculum vitae, do you see that?---Yes, I, I, that was one of the points that I, I realise is, I, I, I assumed I did because the investigator said she had a copy of my CV and I said she can, well, it would normal if the person who is doing a research project that involved my patients that I and the other people whose patients were involved would have to submit a, a CV but I don't know that I supplied it to Sandra Lazarus, I may have, I would have had to have supplied somebody, it may have been, it may have been the secretary in the department but, you know (not transcribable) the proposition that she had my CV and there was something strange about that and I did not believe it was strange.

20 So can I just try and get what you said to us clear, is the position that you have knowledge of your CV being provided in connected with an ethics application?---No, I did not. I, I was not surprised that my CV, well, that somebody doing a research project would have my CV because ethics committees would have the CVs of all the people involved in the research.

So did you first learn that your CV may have been provided in connection with an ethics application when that was a subject that you spoke to a Commission officer about during the investigation?---Yes.

30 And so when we look at the first sentence of paragraph 11 is it correct or incorrect that you supplied Sandra Lazarus with a copy of your CV?---I believe it's incorrect that I supplied her directly but it is not, it is quite likely that it was supplied to her.

Thank you. Now, I understand, doctor, that you have available to you there some documents that were scanned and emailed over to you and they have in the top right-hand corner some page numbering?---Yes, the page numbering is not clear.

40 What I want to go to is a letter apparently under Dr Hacker's hand of 10 April, 2008 to the Royal Women's - - -?---If you could just hold for a moment because I'm holding the phone with one hand and trying to go through the documents, so it's a letter from Dr Hacker?

Yes, to, to the ethics committee of 10 April?---Right. I have seen it I'm just trying to, there's a lot of paperwork juggling here.

THE COMMISSIONER: Perhaps you can give the number.

MR ALEXIS: Yes. And in the top right hand corner it should have page 26?---Yeah, just, just a moment, I'm trying to find, I'm trying to juggle this stuff in, I, I can't find the specific one but I, I, at the moment. I'm working on it. Yes, no - - -

10 THE COMMISSIONER: Take your time, doctor?---Yeah, I'm sorry for the, I'm just going to put the phone down for a moment. I can't find that document at the moment. I pulled it out last night, but can you ask (not transcribable) and I'll see if I can answer it or not.

MR ALEXIS: Of course. What I want to go to is the letter from Dr Hacker to the ethics committee which is at page 26?---Yep.

Also the National Ethics Application form which starts at page 28 and goes through to page 76?---Yes. I didn't print all of that, I just printed the end part. But my, my understanding was that the letter that Professor Hacker (not transcribable) Royal Hospital for Women. But - - -

20 Sorry, you'll have to ask that question again.

THE COMMISSIONER: The answer is yes.

THE WITNESS: The, my understanding was that the letter from Professor Hacker (not transcribable) was addressed to the Ethics Committee of the Royal Hospital for Women.

30 MR ALEXIS: Yes?---My, my understanding is that that would not be the appropriate place to send the (not transcribable) by the (not transcribable) body (not transcribable) the area health service.

Could I ask you some questions about and your knowledge of both the letter and the underlying application in 2008?---Yes.

Firstly, did you ever see in April of 2008 either a draft or the final form of the letter to which we're discussing?---No.

40 And in relation to the ethics application from page 28 to 76, which has been provided to you, did you ever see that application either in a draft form or in a final form in April, 2008 or at any other time?---I don't believe so. I have absolutely no memory of it.

Now in relation to particular pages, I wish to take you if I could to firstly page 57, which appears to have the signatures of Ms Sandra Lazarus and also someone called Ms Jessica Lazarus, each with the date 10 April, 2008.

THE COMMISSIONER: I don't know if he's got that.

MR ALEXIS: That's page 57.

THE COMMISSIONER: I don't think he has it?---Yeah.

MR ALEXIS: Now was that one of the pages you printed off?---No, it wasn't.

10 Can I ask you whether in April of 2008 you ever saw within this application the page that had been signed by Sandra and Jessica Lazarus?---No, I didn't see the (not transcribable) before I saw - - -

All right. I just need to step you through these questions if you don't mind?---I understand.

20 On page 58 of that application we have Professor Hacker's signature next to the date 11 April, 2008, signing as the supervisor of the student. Did you see that page signed by Professor Hacker in April, 2008 or at any other time?---No. Not until last night.

And I now want to come to page 59, which is the page which I'm sure you have looked at and perhaps printed off. It's the one that contains your name and signature?---Yes.

Now, did you sign at page 59 of Exhibit 1 where we see on that page on about 16 April, 2008?---I do not, I have actually no memory of it, I do not remember seeing the document before.

30 And what do you say about the handwriting, just leave aside the signature, but the handwriting that appears on that page above the signature?---Sorry?

What do you say about the handwriting above the signature on that page? --- (not transcribable) but I have it (not transcribable). It certainly is like my writing but I, I really, yeah, it's like my writing, there's no question about that but I, I don't believe I wrote because, because I, I (not transcribable) and I'm not (not transcribable) organisation therefore I would not be able to sign that.

40 And in April 2008 did you hold an appointment as Professor of a university?---An Associate Professor.

Did you ever (not transcribable) yourself on a document as a Professor? ---Probably not but I can't say (not transcribable) official document (not transcribable).

Thank you. Now, I just need to raise a couple of matters with you concerning the letter and the attached ethics application. Firstly, it's been suggested in this inquiry, Dr Marsden, that Ms Lazarus took the completed

document to you and by that I mean the letter and the application form, showed it to you, asked you to sign it where we just indicated and that you did so in front of her. What do you say to that suggestion?---I have absolutely no memory of that and I believe that it would be most unlikely to be true because of the things I've already said.

10 Now, it's also been suggested, Doctor, at page 42 and 43 of the transcript and that's just a reference for the Commissioner but at the top of page 43 in particular it's suggested that a copy of the application was left with you and that all of the signatures, that is, the signatures of Sandra Lazarus, Jessica Lazarus and Professor Hacker were already on the ethics application before it was provided to you. You took about five or ten minutes looking through the final application, you asked Sandra Lazarus some questions about it, you signed it where we've indicated and you then handed it back to her. What do you say to those suggestions?---I have absolutely no memory of it and I may have had it up on my computer screen and, but I have absolutely no recollection of that, I don't believe that took place.

20 All right. Thank you. Now, in paragraph 13 of your statement you tell us that you aren't aware of any of your patients ever being referred to Sandra Lazarus as part of any proposed clinical trial, was that the position?---Yes.

Did you ever see her using a device called the Medex device or any other form of device on any patient of yours in the 2008 year?---Never at all.

Did you ever see her either in the area outside of your office or in the waiting room or anywhere in the outpatient clinic talking to any patient of yours?---Not that I can recall.

30 Did you ever see the Medex device or any laptop associated with that device in or around the gynaecological cancer in the 2008 year?---No.

Did you ever receive any training on how to interpret the results after the device had been used on a patient?---No.

And in the 2008 year did you ever see any patient consent forms or any paperwork including coloured graphs arising from Ms Lazarus using the device on any of your patients?---No.

40 Now, sir, in this inquiry there's been some evidence which suggests, and I'm turning to the page if you'd bear with me, yes, page 70 of the transcript, line 45, again, sir, that's a reference for the Commissioner, it's suggested that Ms Lazarus was referred to and examined a number of patients which were Professor Hacker patients and your patients and then over on page 71 of the transcript at line 11 and following it's suggested that Ms Lazarus showed you the graphs that were produced after the device was used on a patient and that you even helped her analyse the graphs based on the

algorithm, the algorithm which relates to the Medex graphs. What do you say to that suggestion?---I say, I say that is absolutely untrue.

And it's suggested - - -?---I have no idea what the algorithms are, I have no idea what the Medex device is apart from what I read when I was reading the, the (not transcribable) and I have no ability to interpret (not transcribable) no, that's, that's untrue.

10 It's suggested also, sir, that before each test apparently conducted on your patients you were told that was about to take place, in other words, there was discussion between Ms Lazarus and you about the fact that Ms Lazarus was going to use the Medex device and test it on your patients, what do you say to that suggestion?---That is untrue.

Now, I need to come to the requisition forms that are of interest in this inquiry. I understand that you've been provided with pages 107 to 115 of Exhibit 1, is that so?---Yes.

20 Now, in relation to each of those requisition forms, you've seen no doubt that there is a signature in the authorising officer box adjacent to either your surname or a reference to you as the director of the department, do you see that?---Yes, I see those, yes.

Sorry, I need to correct myself. There's reference on the requisition form to you as deputy director?---Yes, that's - - -

MS SOARS: Some of them.

30 THE COMMISSIONER: Some of them.

MR ALEXIS: Now, in July 2008 did you have any delegated financial authority to sign a requisition form as the authorising officer?---No, and no, the answer is no.

And should we understand from that answer that you well understood that in July 2008?---Oh, yes.

40 And is your recollection that it was Professor Walters, the clinical director, who had authority to so sign as authorising officer?---(not transcribable) think about it but it (not transcribable) him or some other delegated member of the medical, the hospital (not transcribable) not specifically Professor Walters but, but somebody in the executive at the and, so yeah, I, I (not transcribable) those documents in that position.

And in July 2008 was it usual or unusual for you to sign your name and describe your title as Deputy Director?---It depended on the circumstances. I only ever used that when I was asked to do something on behalf of Professor Hacker when he was away (not transcribable).

Now, you would've noticed each of the requisition forms have the same date adjacent to your signature 14 July, 2008?---Yes.

And no doubt you also noticed that when you add the expenditure the subject of each requisition the five requisitions total in excess of \$68,000? ---No, (not transcribable) but (not transcribable).

10 I think it's correct, sir, but the point being that in combination the five requisitions sought approval for a large amount of expenditure?---Yes, (not transcribable).

Now, - - -?---(not transcribable).

Now, in relation to each of the requisition forms and having regard to what you've told us about your lack of financial delegation as authorising officer what do you say about whether or not you did sign the requisition forms at page 107, 111, 113 and 115?---I do not believe I signed them.

20 And I may have missed 109. Does your answer apply to that as well? ---Yes, it does.

Now, it's been suggested at this inquiry, sir, that the five requisition forms with the invoices attached to them were presented to you by Ms Lazarus for signature - and Commissioner, I'm looking at page 86 of the transcript from line 10. And it's suggested that you wrote your name as well as the words "Deputy Director" for all of the requisition forms. You looked closely at both the requisition form and the invoice, you didn't ask any questions whatsoever as to what they related to?---I have absolutely no recollection of that and I certainly, as I said to you before, only ever remember having any
30 dealings with Ms Lazarus at that luncheon. That is, that's not true.

And you remember her because I think she sat opposite you at the lunch I think you told us?---That's right at the far end of the table furthest from me.

Thank you. There's one other matter I want to raise with you, sir. In the 2008 year was your, did you have an electronic signature that was stored in the computer?---No, I answered that in the supplementary set of questions from Mr Payne. There would've been, my signature would've been widely
40 available in the department on patient letters and, and other correspondence (not transcribable) my secretary (not transcribable) and waiting for them to be posted and signed (not transcribable) mail it (not transcribable).

Available where?---Well, the office was set up (not transcribable) medical staff know (not transcribable) and then there were two open plan areas - excuse me, an aeroplane just came straight over the top. There was very open plan areas with big (not transcribable) and, and my letters and correspondence would be (not transcribable) on there and the time that I,

that they (not transcribable) and then I'd sign them and then at a time convenient (not transcribable). I think (not transcribable).

And if you were standing in your doorway to your office is the area to which you are referring an area that is diagonally opposite your door?---(not transcribable) Professor Hacker's (not transcribable) would be, was straight outside there and the other one was diagonally opposite (not transcribable).

10 And that's the area that you're referring to where letters and other documents containing your writing and signature could have been located from day to day?---Yes. And I suppose there would have been things in my office (not transcribable) I signed (not transcribable)

Yes, thank you very much, Dr Marsden. That's all I wish to ask you.

THE COMMISSIONER: Mr Alexis, perhaps Dr Marsden should be asked whether there are, if you've been through all the areas of his statement about which he has (not transcribable).

20 MR ALEXIS: Oh yes, of course. Thank you. Dr Marsden, I hope I've covered the main areas, but I should in conclusion ask you whether there are any other parts of your statement to which you made comment earlier in relation to the words that have been used?---I believe they're substantially correct.

So we've covered the areas that you had some concern about?---I believe so.

Yes, thank you very much.

30 THE COMMISSIONER: Dr Marsden the next person who will be asking you questions is the barrister - - -?---I'm sorry, I can't hear.

Dr Marsden, the next person who will be asking you questions is the barrister for Ms Lazarus and her name is Ms Soars?---Right.

MS SOARS: Hello Dr Marsden, can you hear me?---Yes, I can, thank you.

40 You agree with me don't you Dr Marsden, that in the early part of 2008 you had been either introduced to Sandra Lazarus or told of her existence by Professor Hacker and you were aware that she was undertaking a clinical trial project with him?

THE COMMISSIONER: Just ask, excuse me, just ask one question at a time, please.

MS SOARS: Thank you, Commissioner. Dr Marsden, you were aware of the existence of Sandra Lazarus in early 2008 and that she was undertaking a clinical trial project with Professor Hacker. That's correct isn't it?---I

understood that, I knew (not transcribable) somebody who was going to be planning her very first trial.

And are you saying that only at some point you became aware of her name?---I have no, remember when I became aware of her name.

But you did at some point become aware that it was Sandra Lazarus who was going to undertake the clinical trial project?---Yes, I did.

10 And you agree that there was nothing unusual in her being provided with a copy of your CV?---No, I was. Again, I was asked that by Mr Kane (not transcribable) investigate that. And the way it was asked to me was (not transcribable) it was implying that it was unusual and my comment was it was not unusual, it would not be unusual. If anybody who was doing a research study on my (not transcribable) putting in an application, then do that first.

And that's because the Curriculum Vitae or CV would normally be attached to any ethics application in relation to that clinical trial. That's correct isn't it?---Yes, that was correct.
20

And Dr Marsden, I'm putting to you that you did in fact see the ethics application for the clinical trial which is at pages 26 and following, which has been referred to by counsel assisting. That's correct isn't it?---You're putting to me that I did see it?

Yes?---No, do not believe I saw it. I have absolutely no direct memory of seeing it and I have been, I mean, firstly, I'm looking at the final page now addressed to the Royal Women's Hospital Human Ethics Committee and I, I really think that is very, very strange because you do not send these ethics reports to the Royal Hospital for Women Ethics Committee because they have to be received by the South East Sydney et cetera Area Health Services Ethics Committee and so I would have found that very, very strange and remembered it I'm sure when I think.
30

The ethics application is actually submitted by computer process, isn't it? Is that correct?---I have no, no idea. The only ones I've ever seen have been printed.

40 Do you have in front of you page 59 of Exhibit 1 which is the page of the document attached to the letter of 10 April, 2008 which bears your signature?---You've lost me on all that, I've got page 59 which is headed "Heads of Department (not transcribable) research organisation."

Yes, that's the page I want to ask you some questions about?---Right.

You have distinctive handwriting, don't you, Dr Marsden?---I don't know. I have handwriting that has been affected by being a doctor for a long time.

But it's your practice, isn't it, when you're printing your name and details that you do it in capital letters, is that correct?---Mostly, yes.

Yes. And you have a, you have a reasonably distinctive signature, do you agree with me on that?---No, not really. Most people laugh when they see it.

10 Dr Marsden, I'm suggesting to you that on page 59 of that document that that is your signature on that document and that you signed it?---I do not believe I did.

Is it the case you just don't have any recollection of it and you can only say that because of the reason, some of the reasons that you've given today?
---Well, I certainly have no recollection of signing it and I, and yes, I do not believe I would have signed it because firstly I'm not, I was not a head of department (not transcribable) research organisation, secondly it's addressed to the wrong ethics committee, thirdly, yeah, and, yeah, and I would have expected to have a recollection of such a thing and finally I, if anybody in
20 the unit was going to sign it it'd be Professor Hacker and looking at the page before he has signed the page before it, I don't see why he would not have signed the next page.

But isn't it entirely possible if you having looked at the page before which is page 58 bearing his signature that you would have thought it was okay to sign at page 59?---No, I would have expected him to sign it. Furthermore, I've since been told that Ms Lazarus served the document to me, placed it in front of me, watched me examine in minute detail and (not transcribable) and then signed it in front of her after asking her questions, this is just not
30 true.

Dr Marsden, was one of the factors you gave in relation to page 59 that you, that you don't use the title Professor Marsden?---No, it was not, the question I was asked was would I ever use the title Professor and, for official things normally not but on the other hand in everyday parlance I was professor.

So it's not correct you were an associate professor at that time?---No, I was an associate professor but you normally don't walk around saying hello, associate professor to people, you say hello, professor (not transcribable).
40

Yes, and that's, as you say in paragraph 22 that you would often use the term professor, that's correct, isn't it?---As I say in paragraph 22 where?

Of your statement?---Oh, yeah, yeah. Yes, I would, I, I much more commonly use doctor.

Looking at page 59 is there anything about the signature on page 59 that suggests it's not your signature?---I'm looking at it now. Well, the only

thing that, that strikes me is normally as shown on the other signatures I normally put a line under, under the signature. I was, I was looking at these things last night and noticed that that the, that the (not transcribable) was present on some signatures and missing on others, that's, that's really the only thing and also the (not transcribable) which I'm looking at now is not an organisation name that's been messed up and done in some rush, I don't know, but that, that, that, when I was shown, when I saw the document I, I rebutted and immediately said that's not my signature.

10 And do you deny on oath that's your signature at page 59?---Yep. Yes.

Can I take you to the requisition forms, Dr Marsden, they start at page 107, 109, 111, 113 and 115?---Yes.

As at 14 July, 2008 you would've had no reason not to sign requisition forms for clinical trials conducted by Sandra Lazarus would you?---I really have no reason not to except as I stated before I could not sign and I knew I could not, I know (not transcribable) that I could not sign as authorising officer and I, that's not a position I'd sign, I'd sign in other positions but not
20 there and I would confidently expect that if somebody did that that the form would be rejected and would be contacted and asked why you did it et cetera, et cetera so there was no reason I could not sign a form but I did not sign it in that position and I wouldn't have signed it in that position.

THE COMMISSIONER: Dr Marsden, this is the Commissioner speaking. Do you hear me?---Yes.

The requisition form for example at page 107 refers to 50 cervical cancer examination screening tests?---Yep.
30

And then it says (invoice okay to pay). Did you know anything about that as at 14 July, 2008, that is, did you know anything about the 50 cervical cancer examination screening tests?---No.

So would you have signed a requisition form containing that information? ---No.

Yes, thank you.

40 MS SOARS: Do you have those requisition forms in front of you, Dr Marsden?---Yes.

I'm suggesting to you that it's your signature on each of the requisition forms, that's correct isn't it?---It's correct that you're suggesting that, it's my answer that it's not.

And it's correct that some of them have a line under your signature, that's correct isn't it?---I'm just going through them now. Some have a little bit of

a line, some have a bigger line and some have no line as far as I can see on the copy that I have.

10 Could you identify which ones you agree have a line under them?---I can't (not transcribable) I certainly can. The numbering hasn't come out very well on the (not transcribable), I'm looking at page 115 at the moment and that's got a little bit of a line there I think. The one on page, I can't read the page but there's one (not transcribable) research (not transcribable) over the period, that one has no line and the signature seems to me to be substantially different from the previous one.

Can you see clearly page 107?---As I said to you before I, I, the printing (not transcribable) isn't very good (not transcribable) page 107 (not transcribable).

Its requisition number 7-8-3-2-0-9?---7-8 - - -

3-2-0-9.

20 THE COMMISSIONER: It should be the first one, Dr Marsden.

THE WITNESS: (not transcribable) I'm juggling these things with one hand and holding a phone in the other and it's a little bit (not transcribable). Got it, yep.

And that's got a line under it hasn't it?---Yes. But it's (not transcribable) very, very different.

30 But you agree with me don't you that as you sign your signature, especially if you sign it more than one time that there's often variations in the signature. That's correct?---I, I don't always agree with you. And, but I do agree that signatures are not always exactly the same.

I'm suggesting to you that it's your signature on each of the requisition forms Dr Marsden?---Yes, I'm saying I'm I do not believe that's the case.

Do you deny on oath that it is your signature on each of the forms?---Yes.

40 And in relation to the handwriting on the forms you've said in your statement haven't you that it looks similar, it appears to be similar to your handwriting, particularly, particularly in the authorising officers section, and that's in paragraph 21 of your statement?---Yeah.

Could you just explain what you mean by particularly in the authorising officers section in paragraph 21?---Because I actually, it's probably something that have talked about because I think that that's the only place apart from the being where my signature appears. So I think that

particularly should not have been in my statement. What, what paragraph are we talking about?

Do you have that Dr Marsden?---Yeah, I'm just going back to it now. Yes, I (not transcribable) I didn't pick that up when I went through it this morning, last night and this morning because I looked at the statement again. But, yeah.

10 But what are you saying about the words particularly in the authorising officers section? Are you saying that you don't agree with that any more or what, what precisely are you saying about that, Dr Marsden?---I'm saying that I looked at it and said particularly (not transcribable) because (not transcribable) the signatures that are on the (not transcribable) the authorising officer which I wouldn't of paid particular attention.

The particularly is a reference to the handwriting in the box for the authorising officer isn't it?---No, I don't think so. My handwriting on the forms and I think (not transcribable) no, I don't think (not transcribable).

20 Well do you see that you refer in the first sentence in paragraph 21 to your signature?---I'm sorry, I'm sorry, your voice was, could you say that again, please.

I will. The first sentence of paragraph 21 refers to your signature on the forms and the second sentence of paragraph 21 refers to your handwriting on the forms. Were you intending to refer to the different aspects of the form itself in terms of signature and the printed handwriting on the form? ---I honestly don't know what I was meaning to tell you by particularly, but when I read it now, read it now I assume that it was meant to refer to where
30 the handwriting was rather than the handwriting itself. And (not transcribable) when I read (not transcribable).

I see.

THE COMMISSIONER: Dr, Dr Marsden, I think, as I understand it what you're saying is that the only place in the form where handwriting, that's at least similar to your handwriting appears is in that section dealing with the authorising officers name?---That is correct.

40 MS SOARS: Dr Marsden, were you provided with a requisition, another requisition from the requisition book, requisition number 7-8-3-2-1-4 relating to Dr Rhonda Farrell?---Yes, I was.

Do you have that there?---I'll just find it.

Just a moment, Dr Marsden, I'll find the original for the Commissioner?
---I'm going to put the phone down in a moment because I have to find that.

Its page (not transcribable)?---I'm going to put the phone down.

Yes, Professor Marsden but my learned friend made available to me which I don't have any copies of because I assumed it would be copied?---Well, I'm back, I was having trouble finding it. What did you want to ask me about that (not transcribable) a few minutes before (not transcribable)

10 All right. You agree that's your signature on the requisition number 7-8-3-2-1-4?---It's a very (not transcribable) in front of me but it's a very poor copy and I have had trouble reading it and I thought it had been (not transcribable) but anyway I (not transcribable)

Just in terms of where it came from, Dr Marsden?---I'm sorry, I think I'm about to run out of battery power on my phone. Can, can you just hold for a moment and I'll change phones.

Yes, Dr Marsden?---Hello, are you there?

20 Yes?---I've changed to a different handset, I'm sorry.

That's all right. Now, I'm just, I'm back in a different room so I'm going back where I was before. I haven't been able to find that form but I, as I say, when I saw it I (not transcribable) that it had been inadvertently put in there.

Can I just describe to you where that came from. It's a copy of a carbon form?---I've got it.

30 I'll just describe where it came from. It's a copy of a page, a carbon page from the original requisition book which is Exhibit 7 in this proceedings.

THE COMMISSIONER: Do you understand that, Dr Marsden?---Yes, I understand that. I was saying before I can barely read it. I, I can (not transcribable) I can see that it's been countersigned by Professor Walters on 20 February, 2009, if that's correct.

Yes, that's when Professor Walters signed it, yes?---Yeah.

40 Can I just ask you some questions about that please, Dr Marsden?---Yeah, sure.

Do you agree that that's your signature on requisition number 7-8-3-2-1-4? ---Sorry (not transcribable)

And that's your handwriting in the capital letters "D MARSDEN"? ---Probably.

And it's a requisition in respect of money payable to Dr Rhonda Farrell as supplier which she has signed as requesting officer, is that correct?

THE COMMISSIONER: No, it isn't, is not?---(not transcribable) it's hard for me to read but it looks like (not transcribable)

It says, it says "medical defence payment."

10 MS SOARS: Well, the supply details in the top left-hand, Commissioner, I'm referring to.

THE COMMISSIONER: Yes, but the, the description of the item is "medical defence payment."

MS SOARS: Is a reimbursement to Dr Farrell for her medical defence payment, Dr Marsden?---I believe so.

20 Yes. And I'm suggesting to you that there's no material difference between the signature on requisition 7-8-3-2-1-4 and that on the requisitions on 107, 109, 111, 113 and 115 which related to the clinical trial project, do you agree with me as to that?---(not transcribable) I don't know what (not transcribable)

That is the questions I have, Commissioner.

THE COMMISSIONER: Yes, thank you.

MS FURNESS: Nothing, thank you, Commissioner.

30 THE COMMISSIONER: Mr Alexis?

MR ALEXIS: I have nothing further apart from wishing to thank Dr Marsden for speaking with us very early his time this morning.

THE COMMISSIONER: Dr Marsden, thank you very much for giving us your time so early in the morning and at all. We certainly do appreciate it. Thank you?---Thank you very much.

40 MR ALEXIS: Okay, we'll hang up now, thanks, doctor?---Thank you.

THE WITNESS EXCUSED

[11.05am]

THE COMMISSIONER: That concludes today's proceedings does it?

MR ALEXIS: I think my learned friend wants to do something with that copy of the carbon copy.

MS SOARS: I just would like to tender the carbon copy, Commissioner.

THE COMMISSIONER: Yes.

MS SOARS: And have it marked at least so that it's - - -

10 THE COMMISSIONER: No, I'll tender it.

MS SOARS: Thank you.

THE COMMISSIONER: The copy of the requisition number 7-8-3-2-1-4 is Exhibit 93.

#EXHIBIT 93 - ORIGINAL REQUISITION FORM NUMBER 783214

20

MR ALEXIS: And, Commissioner, always with an eye for squeezing the last second could I tender please the policy directive from the Department of Health relating to the need for ethical approval for the conduct of a clinical trial relating to humans. It's a document that has been referred to throughout the inquiry and the Commission should have the actual policy in that regard.

30 THE COMMISSIONER: Yes. The policy directed from the Department of Health re the granting of ethical approval for research on humans is Exhibit 94.

#EXHIBIT 94 - POLICY DIRECTED FROM DEPARTMENT OF HEALTH REGARDING AUTHORISATION OF PROPOSALS TO CONDUCT RESEARCH ON HUMANS WITHIN NSW PUBLIC HEALTH SYSTEM

40 MR ALEXIS: Thank you, Commissioner. And I'd now seek to have the inquiry adjourned till 23 March and I understand the commencement time that day is 11.00am rather than 10.00am.

THE COMMISSIONER: Yes. And, Ms Soars, you understand, I'm sure you'll explain to your client that though we will not be serving another summons on her she's bound to appear on that day.

MS SOARS: We have been proceeding on that assumption, Commissioner.

THE COMMISSIONER: Yes. Very well. I'm not sure what we're going to do, what's the position with regard to Jessica Lazarus and Michelle Lazarus?

10 MR ALEXIS: Commissioner, I'm not sure if Ms Soars can assist us in that respect. I appreciate of course that she only appears for Ms Sandra Lazarus but absent any communication it's proposed that the Commission will write to each of them by registered post informing them that they are obliged under the summons to appear on the 23rd and remain until excused and we
20 hope that will make the position clear. But as I say it may be that Ms Soars can shed some light on what their current situation is.

THE COMMISSIONER: Ms Soars, there's no obligation on your client to speak to them but it would certainly be helpful to the Commission if she does.

MS SOARS: Yes. I have no instructions on that at the moment, I can ask her to speak to them and if you would like me to then communicate that to the counsel assisting I can do that.
20

THE COMMISSIONER: Be grateful, thank you. Yes, the Commission adjourns to 24 March at 11.00am.

MR ALEXIS: 23rd.

THE COMMISSIONER: 23 March at 11.00am.

30 **AT 11.08am THE MATTER WAS ADJOURNED ACCORDINGLY**
[11.08am]