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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION CHARITY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 15 FEBRUARY 2011

AT 9.40AM

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.

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Can I indicate that I propose to have Ms Lazarus recalled to deal with some matters arising out of yesterday's examination concerning the Royal Hospital for Women. I then propose to stand her down for the purpose of endeavouring to meet professional commitments that Professor Hacker has and I would then seek to interpose him so as to have his examination take place followed by Clinical Nurse Barlow, then I would seek to recall Ms Lazarus to complete the examination with respect to the Royal North Shore Hospital followed by Michelle Lazarus if that's a course that's convenient to the Commission.

THE COMMISSIONER: Yes, that's, Ms Soars, you, do you wish to ask Ms Lazarus any questions following our discussion yesterday?

MS SOARS: I raised it with my learned friend, I don't know, are you going to touch on that point again?

MR ALEXIS: Commissioner, can I indicate that my learned friend was good enough to draw attention to a particular passage in the transcript. I propose dealing with that.

THE COMMISSIONER: Yes, yes.

MS SOARS: Excuse me, Commissioner, the only thing is that I assume there's no objection to Ms Lazarus being present while Professor Hacker gives his evidence even though her evidence is not effectively complete in chief?

THE COMMISSIONER: Yes. Well, what is your attitude to that, Mr Alexis?

MR ALEXIS: I certainly have no objection to that course and what I deliberately intended to indicate a moment ago was that the examination as far as I'm concerned of Ms Lazarus would be completed with respect to the Royal Hospital for Women before Professor Hacker is called and examined. Could Ms Lazarus be recalled?

THE COMMISSIONER: Ms Lazarus. Ms Lazarus, you're still under the oath that you swore yesterday.

MR ALEXIS: Commissioner, could I inquire if Ms Lazarus has the examination bundle that was before her yesterday?---No.

Ms Lazarus, arising out of your evidence yesterday there are a couple of matters I wish to go back and seek some clarification on?---Ah hmm.

10 First of all could I ask you to go to Exhibit 1, the examination bundle to pages 93 and 94 which you'll recall are the letters that Mr Ratnam prepared and signed and provided to you?---Yes.

Now, in evidence yesterday you told us that the letters were prepared for the purpose of them being provided to the sponsor of the clinical trial, the second of which letters identified bank account details into which sponsorship funds could be deposited, do you recall that?---Yes, that's right.

20 And I think you indicated that having obtained these letters from Mr Ratnam, they were passed on to Dr Neiron in relation to the proposed funding?---Yes, that's correct.

All right. Now, pardon me, yesterday in your evidence of transcript page 71 from about line 45 and following, and Ms Lazarus can I indicate that's a reference for the Commissioner for yesterday's transcript?---(not transcribable)

I'm sorry?---Oh, sorry, I was looking for page 71.

30 I asked you this question and you gave me these answers. I put this to you, so your evidence is that prior to you providing upon Mr Ratnam to prepare those two letters that were discussed, yes?---Yes.

Prior to the payment of any funds from the sponsor, Ah hmm. And prior to any clinical approval, yes. You conducted not only the 10 pilot tests on patients of Professor Hacker and Associate Professor Marsden, and your answer to that was, yes. Do you recall that evidence?---Yes.

40 Should we understand that you conducted the 10 pilot tests that you were there referring to knowing that no sponsor funds had been paid to the hospital from Dr Neiron or a company associated with him?---No, that's not correct. He'd already told me that he put money into a Go Foundation, which was a funding foundation of some sort that's affiliated with the Royal Women's Hospital. There's an email to verify that, that he suggested that he's already put the funds in the Go Foundation, which is the foundation for the Royal Hospital for Women before I provided this to him. I inquired about it, I said, I haven't given you the details. That's when he replied. There's email evidence for that.

So what you've just told the Commission - - -?---Yeah, I said that yesterday as well.

Well, you may well have, Ms Lazarus, but is the position that you had an understanding that monies had been paid to the foundation you've just referred to - - -?---Yes.

10 - - - prior to the time of obtaining these letters from Mr Ratnam and passing them on to Dr Neiron?---That's correct. That's where I got the \$73,000 figure, from, he said that's the exact amount he's already put in there.

So your evidence to this Commission is that prior to 13 May you had a conversation with Dr Neiron to the effect that he had paid or arranged to have paid seventy three odd thousand dollars into the Go Research Fund? ---That's correct.

20 And your evidence is that that's associated in some way with the Royal Hospital for Women?---That's correct.

All right. Can you tell the Commissioner what your understanding was at that time as to when those funds had been paid?---I was never given financial details as to when Johel Neiron was putting in the funds. That is in relation with all the hospitals. I've taken his word in regards to he will be putting those funds in. I've never made the effort to check either in St Vincent or Strathfield and I've done the same with Royal Women's as well. Like I said, yesterday the first time I became aware that there were no funds provided to hospital was when the letter from William Walters on 24 December.

30 So when in relation to the letters obtained from Mr Ratnam did Dr Neiron tell you that he'd deposited monies or transferred monies to the Go Research Fund? ---That's correct. And I, that's when I - - -

My question was when? When in relation to these letters did he tell you that?---When I approached him, I said, I will have to get the details fixed. That was the protocol, I get the hospital - - -

40 Perhaps you didn't understand my question?---No, I didn't actually.

When did he tell you that he had deposited or transferred those funds in relation to the obtaining of the letters from Mr Ratnam on or about 13 May, 2008?---About a week earlier. And he said that was the second payment.

So we should understand that on or about the first week of May, 2008 - - -? ---That's correct.

- - - Dr Neiron told you that he'd made the first of a number of payments or the second?---The second.

All right?---The 73, which I even inquired about why isn't it 75. I can't remember why he said in terms of why it's not 75 that it's 73. I really can't remember because that was a very odd number that he gave me. I said, well I'll prepare the documents because I have to go back and see what this Go Foundation is. So I went back and I questioned Neville Hacker in regards to the Go Foundation and that's when he provided me, he said that's, yes,
10 that's our foundation.

THE COMMISSIONER: All right. Did you draft the letter at 93 or who drafted it?---93. Um- - -

The letter to Mr Ratnam?---Oh, the letter to- - -

The letter Mr Ratnam signed, rather?---Yes. Um, I provided the, no, I didn't draft the full letter, no, no.

20 Who drafted it?---Oh, he did.

Mr Ratnam?---Ratnam, yes. Oh, but I provided the information for the Medex test, to whom it may concern and the amount and the department. The rest is just- - -

I still, I raised this yesterday and I still don't understand it. If you knew that one payment had already been made- - -?---Ah hmm.

- - -then that is quite inconsistent with the letter, especially the third
30 paragraph, the paragraph that says, "The clinical trial will commence once the trial funds have been transferred to the hospital account. The sum of \$73,000 will be required." But your evidence is that the \$73,000 had already been paid?---That's correct, yes.

And when did you see this letter the first time?---Um, when um, Mr Ratnam finished the letter um, he signed it and gave that letter to me, both on the same day.

40 And did you read that?---Yes, I did, roughly.

Didn't you say- - -?---No, I didn't pay any attention to it.

- - -but I've already got the money?---I didn't pay any attention because he had put it in GO Foundation. I made inquiries about the GO Foundation with Neville Hacker as to is that, and he said, "That's fine, that's the foundation that belongs to them." At that point I stopped any other further questioning and I just passed on the letters to Johel Neiron and questioned no more about it.

But the letters are also false in another respect. It says, "The clinical trial will commence once the trial funds have been transferred."?---Mmm.

As I understand your evidence, the clinical trials had actually been completed by then?---That's correct.

So the letter was giving a, giving a false impression?---To some point, yes, that's correct.

10

And why was that?---It's again, it's just another letter that's just been copied through and um, yeah, that's- - -

Through from what?---From the letter that was provided by St Vincent Hospital.

I beg your pardon?---The letter that was provided by St Vincent Hospitals.

20

MR ALEXIS: Ms Lazarus, you've told us that in the first week of May 2008 you were told by Dr Neiron that a second payment of about 73,000 had been paid into the GO Research Foundation. Is that right?---That's correct.

When in relation to the first payment were you told that had been made? ---Oh, when I gave him the protocol.

When was that?---Um, early, early um, in early, early 2008, um, because the protocol was all um, checked and authorised and approved by Neville Hacker by then and there's email correspondence for that.

30

And just so that we are clear with one another, when you refer to the protocol, are you referring to that which was the subject of the Ethics Application or to something different?---No, no. Um, part of the protocol appears in the Ethics Application.

40

So when you refer to protocol and the early January period of 2008, you're referring to the application that was made to the Human Research Ethics Committee?---No, no. Um, this is the protocol about um, it's a research protocol which outlines um, the aims and methods, it's a small synopsis, institution details um, what the device is, how we'd be conducting the test, what the calculation analysis process is. Um, that's that, that was the protocol that was written. What is in the Ethics Application is um, almost exactly the same information but it's just answering the questions in the Ethics Application. So if they just want the method, then the method's extracted from the complete protocol and inserted into the Ethics Application. If, like, they have their own fields they want to populate. This particular protocol is um- - -

Can I just stop you there- - -?---Sorry.

- - - 'cause I'm not asking about the protocol, I'm asking you about your knowledge about the deposit of funds. Do you follow?---Yes.

So we should understand that in early 2008- - -?---Yes.

- - -approximately January- - -?---Yes.

10 - - -Dr Neiron told you- - -?---Ah hmm.

- - -that the first tranche of funding of about \$73,000- - -?---75.

75,000, thank you, had been paid to the GO Research Fund?---That's correct.

And you linked that with your provision of the protocol as you've described it for Dr Neiron?---That's correct, that's correct.

20 So after you gave that to him you then learnt from him that he had made the first deposit?---That's correct.

The second deposit as you've told us was the first week of May 2008?
---That's correct, yes.

And both of those payments totalling about \$150,000 was to your knowledge paid to that foundation prior to obtaining the two letters at page 93 and 94 of the examination bundle from Mr Ratnam?---That's correct, yes, that's correct.

30 Is that right?---Yes.

All right. Thank you. Now, did you obtain from the Royal Hospital for Women a photo identification card?---Yes.

And did you complete a form called a Photo ID Identification Card Application Form - - -?---Yes.

40 - - - so as to obtain that card?---Yes.

And did the card perform the function of not only providing you with photographic identification but also provide you with security access throughout the hospital?---Yes, that's correct.

And can you tell me please where you required the use of that card in order to obtain access?---I used access once with the card, that was in the parking lot. That's the only time it was required. All the outpatients and Neville Hacker's office does not require any security card at all.

All right. Now, do you recall when it was that you obtained that photograph identification card?---In the very beginning, I can't remember the exact date. It would be late 2007. Again, I don't, I can't remember the date.

Well, could you try and be a little more specific about it. Do you recall yesterday that I took you through various employment related forms - - -?
---Ah hmm.

10 - - - which you signed and completed and dated in or about April of 2008?
---No, I think the security card was obtained earlier maybe. Like I said, I can't remember when it was.

So you're best - - -?---I didn't need access, I didn't need to use the security card to access the patients or Neville Hacker's room. Like I said, I only used that once in the parking lot.

20 Do you have any knowledge as to whether or not your sister Jessica obtained a similar card?---Yes.

And when did she obtain her card to the best of your recollection?---Around the April period.

Ah hmm?---That's when she had a meeting with Neville Hacker and was suggested to go get that card and he did, and he authorised and signed and approved the security card.

30 Now, a moment ago we spoke about the two deposits that were made to the GO Research Fund and you recall yesterday I asked you about your knowledge concerning the deposit of further funds from Dr Neiron or companies associated with him?---Ah hmm, yes.

Can you tell me please what your knowledge was in May, June and July 2008 concerning the making of further deposits by him or companies associated with him to the hospital - - -?---Ah hmm.

40 - - - in relation to what you were doing?---Okay. Once the ethics application was given to him I got a signed copy. He informed me, that's the email you have again, that it would take another two weeks and he would put the 75 in and once the trial agreement was also put forward to him it will be, it will take another two weeks and he'll put the next lot of payments in which to effect I did not question him about it. I didn't even question him whether it was in the account that he was, that I, the information that the hospital provided that on the letter on page 94 and 93 or was he continuing to put it in the GO Foundation. Once it was clarified by Neville Hacker that the GO Foundation belongs to him I had no reason to believe any other way.

So is your evidence that after you obtained the letter from Dr Neiron at page 95 that we dealt with yesterday a further \$75,000 had been deposited to the hospital?---That's correct.

10 And did you understand that directly from Dr Neiron?---Yes, that's correct because I actually asked for this letter. I said we will need some letter saying that you will be sponsoring. In previous, like in previous clinical trials he had never provided me with a letter saying that he would be making a deposit but in this instant I did ask. I said, oh, well, I'll need some sort of letter outlining that you will be supporting this trial at which point he provided this letter.

Could you look at page 95?---Yes.

And you see the second paragraph, Dr Neiron refers to what is currently agreed. Do you see that?---Yes, that's right.

20 And he says, as currently agreed, the initial grant allowed is based on \$A75,000?---Yes, that's correct.

(not transcribable) that the trials will be in the period of three to six months?---Yes, that's correct.

Do you accept from me that he appears as least in that letter to be indicating that the initial grant was \$75,000?---No, that's not correct. There was no way - - -

30 You don't agree with that?---No. Because there's no way he knows as well, this trial cannot be completed in three to six months. And to complete 200 patients in three to six months is just - - -

Perhaps you're not understanding my question. The letter says doesn't it that the current agreement is an initial grant of \$75,000?---Yes.

Your evidence says that two transfers of 73, 000 and 75,000 had already been paid?---That's correct.

40 So do you agree that the letter seems to misstate the position?---Yes, it does misstate it.

But you provided this letter to Professor Hacker didn't you?---That's correct, I did.

As representing that there was a sponsor prepared to pay an initial grant of 75,000?---Every three to six months. That was to my knowledge.

So is the position that after you received this letter you understood that a further \$75,000 had been paid not to the foundation but to the hospital?

---No. I didn't know which one. I just assumed he was just putting it in the foundation where he continued putting that in. It wasn't after this letter, it was after the ethics application, a copy of the ethics application was provided to him around the same time.

THE COMMISSIONER: Ms Lazarus, I - - -?---Yes.

- - - something I don't understand. The second paragraph refers to the initial grant?---Yes.

10

That means the first grant. Do you understand that to be the first grant?
---Yes.

And that the first grant is \$75,000?---Yes.

And the next paragraph says this amount will be forwarded to the hospital?
---Yes.

Directly after we receive all the required details?---Ah hmm.

20

So this letter is telling Professor Hacker that 75, the first payment of \$75,000 will be paid at some time in the future?---Ah hmm. Yes.

But your evidence is that two payments of \$75,000 had been made before this letter was written?---That's correct.

So did you read this letter before you gave it to Professor Hacker?
---Honestly, no. I just think we were - - -

30

Are you seriously telling me that you didn't read it?---Seriously. I ran through it and I just handed that letter to him.

MR ALEXIS: So Ms Lazarus, after 14 May your evidence is that you understood from Dr Neiron that a further sum of 75,000 had been paid, but you're now unsure whether it was paid to the foundation or the hospital. Is that the position?---Yes, that, well he told me it was paid to the foundation.

All right?---The other two - - -

40

When did he tell you that?---The other two were paid - - -

When did he tell you that?---When I handed in the ethics application signed.

And when was that?---I can't recall the date, but around the same time the ethics application was submitted.

Well that was on or about 10 April wasn't it?---Yes, that's correct.

Well that was before - - -?---And then - - -

- - - that was before this letter?---And the agreement, sorry, in which the letter you have, in the email you have, sorry. So the agreement is here on May 16 and then email asking him will he be putting the remaining of the funds in two weeks.

10 So your evidence is that you provided the clinical trial agreement that we see at pages 96 to 99 inclusive to Dr Neiron?---Yes.

And it was with a result of that he told you that a further \$75,000 was paid? ---That's correct.

20 All right. Now did you come by knowledge that any further monies had been paid by Dr Neiron or companies associated with him?---No. I didn't inquire after. All the milestones had been achieved. Then he came to, when I, when he came to the Royal Women's Hospital, 'cause he asked that after every 50 patients of the pilots completed he would like to look at the patient files and just skim over the Medex graphs, graphs himself. So he was invited every time to look at that at the Royal Women's Hospital. And he would be making a deposit accordingly after that.

All right?---To which affect I did not question him at all.

So just to endeavour to accurately summarise the position, your evidence is that you had three communications with Dr Neiron, one in January, 2008? ---Yes.

30 One in about the first week of May, 2008?---Yes.

And one on or about the date of the clinical trial agreement of 16 May, 2008. And in each of those three occasions you were told that about \$75,000 had been deposited to the Go Research Foundation?---That's correct.

40 And after those three communications your evidence is that there was no further communication with Dr Neiron concerning the subject of further deposits of money - - -?---That's correct.

- - - in relation to the clinical trials you say that you conducted?---That's correct.

All right. Does that accurately summarise your position on that?---Yes, it does accurately.

Thank you. Now can I come to another matter. You said in your evidence yesterday that there was an agreement between Dr Neiron or one of his

companies, be it the Medex company or Sydvat company and on the one hand Wish Consulting and your sister, Michelle on the other concerning the provision of marketing services. Do you recall that?---Yes, that's correct.

And do you recall that yesterday you told the Commissioner that you provided a copy of that agreement to Professor Hacker - - -?---Yes.

- - - at the time that you asked him to sign the vendor maintenance form with respect to the Wish Consulting company?---That's correct.

10

Do you remember that?---Yes.

Now I take it because of your evidence that indicated that you showed him the agreement that it was an agreement in writing?---Yes.

And was it an agreement in writing that had been signed by Dr Neiron and your sister, Michelle?---That's correct.

20

And can you recall what the agreement provided for in terms of the provision of services?---It outlined her tasks, her responsibilities, what she needed to complete. It outlined that the (not transcribable) going through the hospital, the Research Institution. It also outlined, this is to the best of my recollection, I can't, I don't know word to word. It also outlined the sum that she would be paid for those services.

30

All right. And just so we're clear this is the same agreement that you were, were referring to yesterday when you said you spoke with Professor Smith at the Royal North Shore Hospital and asked him to sign the vendor maintenance form with respect to Wish Consulting?---The exactly the same one, yes.

All right. Thank you. Now can you tell us please where that agreement is located?---It should be with the ICAC.

All right?---It was with all the documents that were taken.

All right. Is your evidence that it was within the material that was obtained upon execution of the search warrant at your home?---Yes.

40

Can I indicate to you Ms Lazarus, that a review of the material has not turned that document up?---I don't know (not transcribable)

So perhaps you could give consideration in due course to where that document might be - - -?---Yes.

- - - and perhaps search your own records and produce a copy for us, please?---(not transcribable) I've been doing all my searching - - -

Thank you. Now there's just one other aspect concerning the requisition forms that I asked you yesterday about - - -?---Yes.

- - - in relation to the Royal Hospital for Women?---Ah hmm.

And I think you told me yesterday that when you completed each of those five requisition forms and asked Professor Hacker and Associate Professor Marsden to sign them for you - - -?---Ah hmm.

10 - - - you had the understanding that executed requisition forms were required in order to obtain payment of the invoices referred to in them?
---Yes.

Remember that evidence?---Yes.

20 Can you tell me why it was that after you obtained signatures on those five requisition forms which are dated between 11 and 14 July, 2008 you no longer used the requisitions in respect of the following invoices?---I mentioned yesterday that the requisition could not be located. At which point Helen told me where it possibly can be. I did make a search for it. We couldn't find it. I called the accounts department. I followed their instructions, they said to sign it, write the following and fax that through and they will obtain, they will get the necessary approval, 'cause my signature has no authorisation in, all I, all I can sign and all I am is just a requesting person. The approval needs to be obtained from them and they would do that.

30 So if the requisition book that had been used for the purpose of the five requisitions we dealt with yesterday - - -?---Yes.

- - - had gone missing can you explain to us why it was that you didn't seek to use another requisition book?---Well, I wasn't allowed to.

Why not?---Because each department has their own requisition book.

Did you see to try and find the other requisition book?---Why would I find the other requisition book?

40 Did you, my question was did you seek to try and find another requisition book?---No, I was just told you have, you must use your own department requisition book.

So should we understand that the reason why after those five requisitions the book was no longer used was because as you understood it the book had gone missing?---That's correct.

And following the conversations that you told us about yesterday with Pauline and the other accounts person, Stacey Linton - - -?---Ah hmm.

- - - you then annotated the invoices as we discussed and sent them directly to those two persons?---That's correct, that's correct.

All right?---Um, I - - -

10 Could you look at the invoice at page 107, I withdraw that, I'm sorry. The requisition form at 107 and the invoice at 108 and do you see that the invoice attached to the first of the five requisitions bears the date 14 May, 2008?---Yes.

And if you come through then to page 117 which is the first of the series of invoices that were sent to Pauline without a covering requisition form and you see that to be the case on page 117?---Yes.

You see that its date, 14 May, is the same as the date of the first invoice at page 108?---Yes, that's correct.

20 So in July 2008 when you completed the five requisitions can you explain why it is that a requisition was not completed with signatures in relation the invoice that appears at page 117 which is dated as I say the same date as the first invoice attached to the first requisition?---Like I said, the book, I couldn't locate the book. I made inquiries to the accounts department, I had completed the exact number of tests that I had completed to be able to bill for this and when she told me she'd be able to, to obtain approval I had no doubt in believing and I sent that through. Like I said, my signature has no authority. My name's not even on there.

30 Perhaps you could attend to my question?---Yes.

The first invoice attached to the first requisition is dated 14 May at page 108. Do you see that?---That's correct.

The further invoice which is the first of the series of invoices sent directly to Pauline - - -?---Yeah.

- - - at page 117 bears the same date?---Yes, that's correct.

40 May we take it that both invoices existed at the time you completed the first requisition at page 107?---Yes, you can, yes.

So why didn't you complete a requisition form with respect to the 14 May invoice at 108 in relation the second of the 14 May invoices at page 117?---I didn't put that through.

Well, we know that?---(not transcribable)

My question was why?---I just, well, I must have left it at home or something. It was just maybe careless.

THE COMMISSIONER: Had it nothing to do with the missing requisition book, had it?---What, what do you mean? It had nothing to do with the missing requisition book. This was put in later.

On 14 May - - -?---Yes.

10 - - - you put in an invoice with the requisition?---Yes, that's correct.

On the same date you put in an invoice without a requisition?---No, this was sent later. This was - - -

You've answered Mr Alexis to say that they were sent on the same date? ---No, no, no, they weren't sent, they were developed on the same date, they weren't sent on the same day. If you have a look, this wasn't sent on the same day.

20 Right. If you prepared them on the same date why - - -?---Yes.

- - - why did you prepare one with the requisition form and one without? ---That's what I was trying to say. I must have left it at home or forgot about this one or did something to it. It's not that it wasn't, that there was any question about it getting approval for the requisition forms. Like I said, there wasn't ever any issue in Neville Hacker ever signing anything. He didn't, most of the time he didn't even question what he was signing at times, he looked at it, he knew what he was signing but he never objected to anything.

30 MR ALEXIS: Can I just - - -?---So there is no reason for me to ever say oh, I don't need to get approval, there was never a time where he didn't, he knew exactly what I was doing. There was never a time where he didn't give approval.

I asked you yesterday whether the dates of each of the invoices were a reliable indication of when the invoice was generated. Do you recall those questions - - -?---Yes.

40 - - - I asked you yesterday and you responded to them by telling the Commissioner that the invoices were prepared on or about the date that each of the invoices bear?---That's correct.

Do you remember that?---Yes.

Just, what I'll just put to you, namely the fact that with respect to two invoices that bear the same date - - -?---Ah hmm.

- - - one was prepared with a requisition, one was not?---That's the, yeah.

Does that raise a question as to whether in fact the dates accurately identify the date of creation of the invoice or - - -?---Yes, it does accurately but you have to - - -

Please go on?---This was not sent at the same time.

You've made that position clear - - -?---Yes.

10

- - - but my question relates to the date of creation of the invoice?---Ah
hmm.

And your position is that we can rely accurately on the date of each invoice as the date that each invoice was prepared - - -?---Around the - - -

- - - in relation to the work that the invoice describes?---That's correct.

20

All right. Thank you. One last matter concerning the Royal Women's Hospital if I may?---Ah hmm.

You said to us yesterday that the number of examination tests at the Royal Women's Hospital based on each of the invoices for \$15,000 plus GST represented the performance by you of ten tests at a charge rate of \$1,500 per test?---That's correct.

30

And I think you told me yesterday that that rate per test was a rate to which Dr Neiron had agreed to pay you under the funding arrangements that we've discussed?---That's correct.

Now, if you look at the invoice at page 122 we see what I think is the earliest date of all of the invoices that were generated from Medical and Clinical Informatics Consultants to the hospital - - -?---Yes.

- - - in relation to what we should understand as the performance of ten examination tests, is that right?---Yes, that's correct.

40

And if you look at the invoice at 127 you'll see that that is an invoice dated 28 July, 2008 which is the last of the invoices generated by that company in relation to those tests. Do you see that?---Yes, that's correct.

So, sorry, I can't read that word. Now, Ms Lazarus, should we understand in relation to the nine invoices that your company generated in relation to the examination tests, each for \$15,000, that that represents a total of 90 tests carried out?---Yes.

And 90 tests carried out between approximately the date of the earliest invoice, namely 14 March, 2008 and the date of the last invoice, namely

28 July 2008?---Yes. The amount of tests that I actually completed exceeded 90. I've only billed for 90 so far.

So we should understand that whatever might be the actual number - - -?
---Yes.

- - - your evidence before this Commission is that you at the very least completed and billed for - - -?---90.

10 - - - 90 examination tests - - -?---That's correct.

- - - in respect of patients of either Professor Hacker or Associate Professor Marsden - - -?---That's correct.

- - - at the Gynaecological Cancer Clinic at the Royal Women's Hospital?
---That's correct.

Thank you. Now, with respect to each test, I think it's accurate to say that
20 in the ethics application forms, the duration of the test was described as taking about 20 minutes?---Yes.

And in your experience with these things is that accurate, should we understand that the tests routinely take approximately 20 minutes?---They take 20 minutes including, depending on how good an analyst the doctor is in terms of analysing the graph, yes.

Now, in respect of the 90-odd tests that you performed during that period that I've referred to, can you tell me where the patient consent forms for those 90 patients were placed after the conclusion of each examination test?--
30 --Um, they were placed in the patient file. It was a white folder. In that white folder there are plastic sleeves. In those plastic sleeves there are patient consent forms, a copy of the patient consent form and a copy of the Medex file and also a pathology report and if Neville Hacker's notes are available, Neville Hacker's notes as well, or Marsden's.

And when you refer to Professor Hacker's notes, notes relating to what?
---Dictated notes.

40 Relating to what?---The diagnosis of conventional screening methods for that particular patient.

And is that relevant because one has that to then look at the result of the Medex test to see whether or not the- - -?---Um, no. It's just like a reference point. Um, I always kept it in there um, as they were complete patient files so if I did need to refer to any abnormalities, like I'm not an expert in reading pathology results and things like that, for that reason I would need those notes. But at times it is highlighted on the pathology if something is abnormal.

So your evidence is- -?---(not transcribable) I wouldn't need the notes.

Thank you. So your evidence is that in respect of each of the 90-odd patients that were the subject of your testing, a plastic sleeve was maintained in a white folder?---Yes.

And within that plastic sleeve was kept the patient consent form- -?---Yes.

10 The printout of the graph from the laptop computer- -?---That's correct.

- - -which received the data from the Medex device?---That's correct.

Reports or notes concerning the patients' pathology, either from Professor Hacker or from other, from some other source?---Or the pathology report, yes.

20 And that white folder was maintained, was it, in a storage cabinet in the Gynaecological Cancer Centre?---No, not in a cabinet. It was in the filing room. Um, it's a large room, it's got the filing cabinets on one side and it has a cupboard on the other side um, a short wooden, like, short cupboard and then it has a filing cabinet, not a filing cabinet, like a storage cabinet where the stationery's kept. In front of that is a white chair, like a dirty white chair. Underneath that I kept the equipment and the two folders.

All right. And where was that filing room that you've just described in your evidence?---Behind the receptionist's office.

30 And the receptionist's office is the office of Helen that we've spoken of yesterday?---That's correct.

Thank you. Commissioner, that's all I wish to ask Ms Lazarus on the Royal North, on the Royal Women's Hospital. I'd ask that she be stood down presently for the purpose of calling Professor Hacker.

THE COMMISSIONER: Ms Lazarus, would you please stand down and you will be re-called in due course.

40 **THE WITNESS STOOD DOWN** **[10.23am]**

MR STITT: If it please Your Honour, I seek leave to appear for Ms Lazarus in relation to this witness, leading my learned friend, Ms Soars.

THE COMMISSIONER: Yes.

MR STITT: My name is Stitt.

MR ALEXIS: Thank you, Commissioner. Sir, is your full name Neville Frederick Hacker?

MR HACKER: Correct.

MR ALEXIS: You- - -

THE COMMISSIONER: I think we need to- - -

10 MR ALEXIS: I'm sorry.

THE COMMISSIONER: - - -find out whether, and Mr Professor also has to be sworn in.

MR ALEXIS: Yes, I was just going to say- - -

THE COMMISSIONER: Mr Barrister, do you- - -

20 MR STITT: I do have an (not transcribable) to make, thank you, Commissioner.

THE COMMISSIONER: A Section 38 order?

MR STITT: I do, thank you, Commissioner.

30 THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Professor Hacker 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.

40 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY PROFESSOR HACKER 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.**

THE COMMISSIONER: Now, Professor Hacker, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

PROFESSOR HACKER: The latter.

THE COMMISSIONER: It's a matter of personal conscience, Professor Hacker, it's not for your lawyer to tell you what to do.

PROFESSOR HACKER: I'm happy to give it under oath.

THE COMMISSIONER: All right. Please swear Professor Hacker in.

10

<PROFESSOR NEVILLE FREDERICK HACKER, sworn [10.25am]

MR ALEXIS: So your full name is Neville Frederick Hacker?---Correct.

You are the director of the Gynaecological Cancer Centre at the Royal Hospital for Women at Randwick?---Correct.

10 And you have provided the Commission with two written statement of evidence. May I identify them by date. The first was given on 3 June, 2010, the second was given last Friday, on 11 February, 2011. Is that correct?---Correct.

Do you have each of those statements with you?---I do.

Thank you. And would you tell me, please, whether or not you've had the opportunity to review both statements before giving your evidence today? ---I have.

20 And are the statements that I have referred to true and correct to the best of your knowledge and ability?---They are.

Thank you. I tender those two statements, Commissioner.

THE COMMISSIONER: Yes. Are they in Exhibit 1?

MR ALEXIS: No, they're not, Commissioner. Can I provide to you, Commissioner, each of the two statements that I have just referred to.

30 THE COMMISSIONER: Yes. The statement by Professor Hacker of 3 June, 2010, will be Exhibit 2.

**#EXHIBIT 2 - STATEMENT OF PROFESSOR NEVILLE HACKER
DATED 3 JUNE 2010**

40 THE COMMISSIONER: And the statement of Professor Hacker of 11 February, 2011, will be Exhibit 3.

**#EXHIBIT 3 - STATEMENT OF PROFESSOR NEVILLE HACKER
DATED 11 FEBRUARY 2011**

MR ALEXIS: Thank you, Commissioner. Professor Hacker, should we understand your qualifications to be as set out in paragraph 4 of Exhibit 2, your first statement?---That's correct.

And in paragraph 4 and in paragraph 5 you tell us relevantly of your experience and particularly of your conjoint professorship with the University of New South Wales with respect to gynaecological oncology?
---That's correct.

10 Thank you. Now, paragraph 6 of Exhibit 2 you tell us a little of your work in relation to the conduct of clinical research trials and should we understand that prior to meeting with Ms Lazarus you had never undertaken any trial with respect to the device known as the Medex device?---That's correct.

Thank you. Now, in paragraph 9 you tell us there that any person employed by the hospital can apply to the Northern Hospital Network Ethics Committee to conduct clinical research. And then you refer particularly to students who wish to undertake trials and tell us what they may apply to the hospital for what you describe as temporary employment while the trial is being undertaken. Do you see that?---That's correct, yes.

20 Can you explain to us please why it's necessary as you understood it for students to obtain a form of employment with the hospital for the purpose of undertaking a clinical trial?---Well, it would be some type of appointment. It wouldn't have to be employment, it wouldn't have to be paid employment, but they would have to have some sort of formal affiliation with the hospital.

30 All right. So you're not suggesting there that it was necessary for the student to become an employee of the hospital in, in - - ?---No, no. That's not quite correct to say temporary employment, it would be a temporary appointment.

All right. Now can I come to your initial dealings with Ms Lazarus, which you tell us a little about from paragraph 11. And perhaps it might be of assistance to clarify this at the outset and then go to some details concerning Ms Lazarus. Have you ever met her younger sister by the name of Jessica Lazarus?---No.

40 Have you ever spoken to anyone who has identified themselves to you as Jessica Lazarus?---No.

Have you ever seen either in and around your professional rooms at the hospital or indeed anywhere around the Royal Women's Hospital anyone by the name of Jessica Lazarus?---No.

Now in paragraph 11 you tell us that it was in about October or November, 2007 that you first met Ms Lazarus when she came to introduce herself to you. And you see in the second sentence you refer to her informing you that

she, that is to say Ms Lazarus, was undertaking PhD studies through the University of Sydney. Do you see that?---That's correct.

So is your recollection that during the first introduction she intimated to you that she was a current PhD student?---That's correct.

So you understood from what she said that she was then currently enrolled in that capacity at the University of Sydney?---That was my understanding, yes.

10

And did that understanding ever change during your dealings with her? ---No, no, it did not, no.

She also told you did she that she was then undertaking a clinical study with respect to prostate cancer at St Vincent's?---She did.

And she was conducting another trial using the Medex device concerning lung and breast cancer through Concord Hospital?---She did.

20

At that point, that is to say during those, during the first introduction and shortly thereafter did you take any steps to verify whether in fact Ms Lazarus was a currently enrolled PhD student at the University of Sydney? ---No, I did not.

Did you take any step to independently confirm or verify that the courses of study that she was undertaking at St Vincent's or at Concord Hospital were in fact being undertaken by her?---No, I did not. But she, she mentioned doctors that she was working with there and it sounded credible to me.

30

All right. Now in paragraph 13 you tell us about a presentation that you asked her to provide to the medical and other staff at the Cancer Centre and it seems that that presentation occurred during a regular lunchtime meeting. Is that right?---That's correct.

And in paragraph 16 you refer to what you describe as the initial proposal to test about 100 patients with cervical cancer, which led to the discussion that you tell us about in paragraph 17, concerning the conduct of a pilot study. Do you see that?---That's correct.

40

Now, and then over the page but still in paragraph 17 you tell us that Ms Lazarus was accepting of your suggestion with respect to the pilot study of the device?---That's correct.

Now I just want to show you a document, I just want to show you a document, Professor Hacker, that Ms Furness made available to us yesterday and can I provide you with a copy, Commissioner. Sir, the document commences with an email which on its face appears to have been sent by Ms Lazarus to you on 27 November, 2007. Do you see that?

---That's correct.

And would you be good enough just to confirm that the email address of yours was in fact your email address at the time?---It was.

Thank you. And do you see that after pleasantries in the content of the email there's reference to her having completed an experimental protocol and she asks you to take a look. Do you see that?---Yes, I do.

10 And then if you look over the page we've reproduced the attachment to that email which is headed, Study Synopsis. And you'll notice about half way down the first page a reference to the number of participants being 200 female patients. Do you see that?---That's correct.

Now I'm drawing your attention to this to try and understand when in relation to your receipt of this protocol document the presentation to medical and other staff occurred and when in relation to your suggestion of a pilot of 10 was made, perhaps using the date of the email as a point of reference?---This email followed the initial meeting that I had with Sandra
20 Lazarus. She did want to do 100 or 200, I don't remember exactly, but a large number of patients. And, and she did attach this protocol here and some information about the device in that email. And then I said to her that I needed to know more about this product and I said, were there any scientific papers written that substantiate this test? And she did provide me with two publications in the Journal of Gastroenterology, which I'm happy to provide. She also sent me a more detailed protocol information from the company about the Medex test, which I'm also happy to provide, setting out the rationale for the, the areas on the skin that needed to be stimulated on the hand and the feet. And so that certainly gave some credibility to the
30 whole thing. And I then said to her, okay, well what you need to do is, is talk to our Thursday meeting, which is a regular meeting of doctors and nurses in the department, in which we often have a guest speaker. And I said, I want you to give a scientific presentation so everybody in the department can understand what we're talking about, what you're talking about. And then we'll make a decision as to whether we want to proceed with this or not. So she gave the presentation. I spoke to the other doctors there and we felt that it wasn't an unreasonable thing. But I made it very clear to her that she could only do a pilot study of 10 patients. I said, 10 patients will tell us whether this is worth proceeding and I said, we need
40 early cervical cancers, we don't want to test it on advanced cancers. It needs to be on pre-cancer and early cervical cancers so that we can see if it's worth pursuing. And she agreed to that.

Thank you. Commissioner, can I tender the email to Professor Hacker from Ms Lazarus dated 27 November, 2007.

THE COMMISSIONER: And the attachment.

MR ALEXIS: And the attachment. Thank you.

THE COMMISSIONER: The email from Professor, from Ms Sandra Lazarus to Professor Hacker of 27 November with attachment is Exhibit 4.

#EXHIBIT 4 - EMAIL FROM MS SANDRA LAZARUS TO PROFESSOR HACKER WITH ATTACHMENT DATED 22 NOVEMBER

10

MR ALEXIS: Professor, I now wish to take you to a bundle of documents, Exhibit 1, which is an examination bundle which has been provided to you and you'll see that the documents in that folder have page numbers in the top right-hand corner. Would you be good enough to go to page 5, please. And so that should be a copy of a registration of a clinical trial with the Australian New Zealand Clinical Trials Registry. Do you see that?---I do.

20 And if you could look, please, at the dates concerning submission and registration, the first couple of entries which bear the date 6 and 21 January, 2008. Do you see that?---Correct.

Mmm. Now, on the third page of the document of page 7 of the bundle of documents you will see references to the Royal Hospital for Women and above that a reference to a target sample of 210. Do you see that?---I do.

30 And over the page, page 8 of the examination bundle, you'll see that your name appears under the point of reference for scientific queries. Do you see that?---I do.

Now, in paragraph 58 of your first statement, Exhibit 2, if I could ask you to go to that, please. You tell us that you were unaware of this Website or the posting in relation to the use of the Medex device in clinical trials. Do you see that?---Correct.

And you also tell us that you were unaware that you had been listed as the contact person for scientific queries. Do you see that?---I do.

40 And do you maintain that position that at no time were you aware that any Website registration of any proposed clinical trial using the Medex device for the early detection and early diagnosis of cervical cancer had been registered?---Oh, absolutely unaware, yes. No such trial had ever been initiated.

And is your evidence that at no time did Ms Lazarus ever speak to you about the registration of any such clinical trial in relation to this registry?
---Did not ever speak to her about that.

And if you could turn to page 10 of that folder of documents, sir, you'll see a similar document concerning the international clinical trials registry platform. Do you see that?---I do.

And similarly if you look just below halfway down the page under the heading contacts, there's a reference to you at the address of the Royal Women's Hospital?---I do.

10 And again may we understand that at no time were you ever asked or informed or did you give any approval to the registration of any clinical trial in the form that we see at page 10 of the bundle?---No, absolutely not. And this is the first time I've ever seen this registry.

All right. Thank you. Now, sir, while on the examination bundle, can I take you to page 12 and you'll see at page 12 and indeed during the following pages some forms relating to employment details of Ms Lazarus at the hospital. Do you see that?---I do.

20 Now, you told us earlier I think that you didn't understand that she would be given temporary employment with the hospital, more a temporary position. Do you recall that?---That's correct. I did make it very clear to Sandra Lazarus when she first came to me that there would be no financial assistance for this study from either the department or from the hospital, and she told me that she would have some external company support for the study.

30 Mmm. All right. Did you understand, and you'll see from these documents that they are dated various in about April of 2008, did you understand that Ms Lazarus would be completing employment-type forms with the hospital in order to conduct any clinical trial at the hospital?---I, I took Sandra Lazarus down to Vanessa Madunic, who is the director of corporate affairs at the hospital, and I told her that Sandra was going to be doing some tests and initially a pilot study, testing a new device called Medex for cervical cancer detection. I told her that the work was going to be sponsored by the Medex company and I asked her how we should facilitate that within the hospital in terms of setting up some sort of an account in which the money would be deposited and also making her some sort of official, giving her some sort of official appointment to the hospital.

40 Ah hmm. My question was whether you were aware at the time that she would be completing forms as if she was becoming an employee of the hospital?---I was not aware of that, no.

No. And is there any reason as you would understand it as the director of the centre why a student wishing to conduct clinical research trials at the hospital would need to complete forms which are forms for employees or prospective employees to complete at the hospital?---No, there would be no need for that.

Now, could I take you to paragraph 19 of your first statement, Exhibit 2. And you will see there, sir, that you deal with the subject of ethics approving?---Sorry, which- - -

Paragraph 19 of your first statement. Now, you tell us there that you informed Ms Lazarus that the application would have to be complete and you tell us that you did not assist her with the preparation of the application. ---That's correct.

10

That's the position, is it?---That's, that's correct.

And in 20, that is to say paragraph 20, you tell us that you cannot recall ever seeing the application, seeking approval prior to its submission to the committee?---That's correct.

20

All right. Could you open the examination bundle please in the folder before you and come through to page 26. And do you see a letter which is addressed to the Ethics Committee and the application form under cover of that letter, which commences at page 28, and if you could just take a moment to examine the document. It goes through to page 76 of the bundle. Have you had a chance to examine the application form for Ethics Approval together with the site-specific application form that I just referred to, sir? ---I have, yes.

30

Thank you. Now, when you gave your first statement, do you recall whether you were actually provided with the letter at page 26 and the underlying application forms as they appear in the examination bundle? ---I don't believe I was, no.

40

Now, in relation to those documents could I ask you to go please to your second statement that the Commissioner has marked as Exhibit 3 and come through to paragraph 16 and is it the case that when you came to prepare your second statement last Friday you'd been shown the letter at page 26 and the two applications reproduced in the examination bundle?---That's correct.

And having had those documents provided to you you said that you hadn't seen the document before?---That's correct.

And so we should understand that the first time you had actually seen the letter and the application forms reproduced in the examination bundle was when they were shown you last, late last week?---Correct.

You've also said in paragraph 17 of your statement, I withdraw that, I'm sorry. You also say in paragraph 16 of the statement that you didn't sign the letter and you didn't sign the application forms, is that right?---That is correct.

MR STITT: The paragraph doesn't say that.

MR ALEXIS: Thank you.

10 Paragraph 16 of your statement, professor, says that you didn't sign the letter and paragraph 18 of your statement says that you didn't sign the NEAF, that is to say the National Ethics Application Form and paragraph 20 says that you didn't form the SSA, sign the SSA form which commences at page 64 of the bundle which is the Site Specific Assessment Form?---That's correct. I didn't, I didn't sign any of those forms.

Now, can I draw particular attention to what appears to be a signature on page 26?---Yes.

And could I also draw attention in the first of the two application forms to the signature that appears on page 58?---Yes.

20 And also what appears as a signature on page 70?---Right.

And having drawn attention to each of those three signatures, what do you say about whether or not you signed your signature as we see reproduced on those pages I've identified?---Whether I sign like that are you asking?

I'm asking whether in light of the signatures that appear on those pages you actually did sign those forms and the letter?---No, I did not sign those forms. It does look like my signature but I did not sign those forms.

30 THE COMMISSIONER: Do you, can I, the first letter, the 10 April letter is signed "Neville Hacker" and the other two are signed - - -?---"NF Hacker."

- - - "NF Hacker?"---Yes.

Do you use both forms of signature?---I do.

MR ALEXIS: Now, professor, at page 70 of the examination bundle which is one of the pages - - -

40 THE COMMISSIONER: Sorry, I beg your pardon, what page?

MR ALEXIS: Page 70, Commissioner.

THE COMMISSIONER: Thank you.

MR ALEXIS: Which is one of the pages that I referred to a moment ago when I asked you about the signature. Do you see the form of declaration which in numbered paragraph 3 refers to the National Statement of Ethical Conduct in Research?---I do.

Now, appreciating what you've just said in your evidence about the signature, were you nonetheless aware in April 2008 about the content of that national statement on the conduct of research?---I was, yes.

And what was your understanding in relation to the application of that statement with respect to the conduct of any clinical trial involving humans, whether as a pilot study or a larger scale study?---Well, that it couldn't be done until ethics approval had been obtained.

10

And did you have an understanding in April 2008 what consequences might arise to a medical practitioner who undertakes a clinical trial or supervises the conduct of a clinical trial without any ethical approval being obtained? ---I certainly do.

And what consequence did you understand that to be?---Well, it could result in dismissal.

THE COMMISSIONER: Dismissal as what?---From the medical board.

20

Just as a matter of information, Professor Hacker, I notice that on page 70 the declaration, the form is a declaration by the principal investigator and an associate investigator and, and you are described in the form as the principal investigator, in an arrangement like this would, would you be the principal investigator or would somebody else be the principal investigator?---It, I, I could well be the principal investigator as the head of the department.

Even though you don't carry out any of the tests yourself?---That's, that's correct.

30

Because it's under - - -?---It's under my - - -

- - - your authority?--- - - - my authority and so it would not be inappropriate to have me but I am not an associate professor, I am a full professor and that would have been apparent to me had I been shown this form. There is a, I'm not sure what page but I saw it before, Professor Marsden's signed as Professor Marsden, he's not a full professor, he's an associate professor.

40

MR ALEXIS: You may be referring to page 59, professor?---59. So these would be things that would be very obvious had I seen these actual forms.

THE COMMISSIONER: When - - -?---Exactly, he signed it as head of department. He's not head of department and he's not a full professor, he's an associate professor.

When, when, you've testified that the signature which appears on your form as yours is not your signature?---Well, I'm, I'm saying I didn't sign the form.

That's correct?---Yes.

10 And I'm just trying to understand is that because on recognising, I'm looking at the signature, you are able to say categorically or using some other description that it's not your signature or are you saying this is not your signature because you just know that you didn't sign this form? Which of the two is it?---The latter.

And it's because you've only seen the form recently?---That's correct.

And you, it's because you know that you haven't seen that form before?
---That's correct.

I see. Thank you.

20 MR ALEXIS: Professor Hacker, could we go back to paragraph 35 of your first statement, Exhibit 2 where you tell us there about a conversation you had with a Vanessa Madunic in about April of 2008. Do you have that - - -?
---That's correct, yes.

Thank you. Those employment related forms that I was referring you to earlier, was the completion of those something as you understood it as being left to Ms Madunic to arrange?---That's correct. Ms Madunic and the human resources department.

30 You then tell us in that paragraph that on 17 April, 2008 you wrote to her making the request for temporary employment that you refer to in that paragraph, do you see that?---I do.

And would you be good enough to open the examination folder before you at page 83, you'll see a copy of the letter to which you are there referring. Now, I need to come to some detail, but firstly in the last sentence of paragraph 35, you refer to Ms Madunic arranging for Ms Lazarus' appointment to the position of Honorary Hospital Scientific Officer. Do you see that?---That's correct.

40

What did you intend to mean by the use of the word Honorary in that expression?---That she would not receive any payment for the study.

And was that put, that is to say that Ms Lazarus would not be paid by the hospital, a matter that was discussed at all during your conversation with Ms Madunic?---It was.

And can you tell us please what was said in relation to that subject?---I told Ms Madunic that Sandra Lazarus would be paid by the Medex company. That this was a company whose device she was testing. There was clearly an advantage to the company to have a successful test, so it was logical that they would pay for the research, that's common. And that we needed to facilitate this by setting up an account and making her some sort of an honorary appointment to the hospital.

10 All right. And should we understand from paragraph 36 that you regarded this as a formality so as to facilitate administratively the arrangements that were proposed as between you and Ms Lazarus?---That's correct.

Now when you said what you did in paragraph 35, may we take it that you had a copy of the letter at page 83 of the examination bundle before you?
---Yes, I did have that.

20 And we see of course that directly under paragraph 35 you refer to the production of that letter as part of the material to your statement?---That's correct.

And should we understand that when you gave this statement back in June last year you had accepted that you had written the letter and you had signed the letter?

THE COMMISSIONER: 17 April, is that the letter you're talking about?

30 MR ALEXIS: Correct?---I read the letter and I thought that's, I can't imagine I would write something like that, but I saw the signature and assumed that it must have been the case. But I have subsequently retracted that in, in the more recent application.

I'll come to the retraction, sir?---Okay.

40 But I just want to understand this, you seem to have accepted in paragraph 35 that you wrote the letter and in the last sentence of that paragraph you refer, as you've just explained to Ms Lazarus being the subject of an honorary appointment. But the letter of course refers to, in the last paragraph a payment rate. That is to say a rate as a principle hospital scientist grade 2 fifth year. Do you see that?---That's right.

It rather suggests doesn't it that Ms Lazarus was going to be paid as an employee of the hospital at the rate so prescribed?---That money was to come out of the Medex money which was to go into an account so she would be paid, my understanding was that the rate of pay that she would get for this study would be at that rate as indicated there, but the money would not come from the hospital.

So does that indicate that you had knowledge in or about April of 2008 as to the amount of money that would be paid to Ms Lazarus in relation to the conduct of a clinical trial?---I assumed that Vanessa had worked this out with Sandra Lazarus and the Human Resources department. And that they had some agreement that this would be the rate of pay.

10 Can you I take you to your second statement that has been marked Exhibit 3. And would you come through to paragraph 5. Now in that paragraph you've again referred to the letter that we are examining at page 83 of the examination bundle?---Correct.

And you tell us there that you now believe that you did not compose the letter?---That's correct.

20 Now can you explain what you meant as to your statement concerning the composition of the letter? Do you mean by, for example, that you did not dictate it or you didn't prepare it or both or what?---I didn't prepare it, I didn't write it, I, I don't believe that, that I had anything to do with that letter in retrospect.

THE COMMISSIONER: Did you sign it?---No, I don't believe I signed it.

And, and why do you say that, Professor Hacker?---I've set out those reasons - - -

Because of paragraph, what's in paragraph 7 of this statement?---The most supplementary statement that those, those reasons set out there.

30 And that's, that, it doesn't, even if one accepts every one of those dot points in paragraph 7 - - -?---Ah hmm.

- - - it doesn't necessarily follow that this is not your signature because the letter might have been prepared by somebody else, placed before you - - -?
---Yeah.

40 - - - I mean with all the deficiencies that you set out and you have signed it. I mean that is a notional possibility. To me it seems, and I'm asking you to comment on that?---When I was first shown the letter I was still under the impression that Sandra Lazarus had been appointed to some sort of position as a hospital scientist and so that part of it was credible. I still was under the belief that between Ms Madunic and the Human Resources Department, they had found some appointment for her which would facilitate the payment of money from Medex to her to conduct this clinical trial. In fact it was only very recently that I found out that was not the case.

That still doesn't answer the question that I put to you. Is it, I'll reformulate the question. Accepting for the purposes of argument that every one of your dot points in paragraph 7 is correct, it doesn't necessarily follow that you

didn't sign this document because somebody else may have prepared the document, put it in front of you and you may have signed it. Is there, that's how it seems to me at the moment and I'm asking you whether there is anything about any of the dot points or anything else about this document which leads you to believe that you didn't sign it?---I, I never sign Professor Neville Hacker, that - - -

Sorry, but that's, somebody has written Professor - - -?---That's right. Ah
hmm.

10

(not transcribable) you didn't sign Professor Neville Hacker. You sign Neville Hacker?---I sign Neville F Hacker and if it's a more formal thing I would put underneath it Professor of Gynaecological Oncology, University of New South Wales.

Sorry, I'll maybe just try and make my question clearer. This is, this is just simply a notional possibility that I'm asking you to comment on?---Ah
hmm.

20

The notional possibility is that somebody else drafted this letter and typed it. Brought the letter as drafted and typed to you and put it in front of you. You can comment on that. Did that happen or not?---I don't believe so. No. Because I, I read letters very carefully and very pedantic about, you know, grammar and punctuation and that sort of thing. So I can't believe that, for example, I would, I would never (not transcribable) something to Vanessa Madunic, I know that she's not part of the Human Resources Department. The whole thing is a logical - - -

30

I understand that, but I've asked you to assume that you didn't draft or type it?---Mmm.

But perhaps somebody did those things and put it in front of you and you, you simply, and you signed it. And I'm asking you whether, to comment on that proposition?---I think it's extremely unlikely, because I, I read things, I don't just sign things blindly.

40

May I ask why when you, when you made your first statement did you accept that you'd signed it?---Um, I didn't read it carefully, I was still under the impression or assumption at that stage that she had in fact been appointed to the hospital um, and um, so I, and, and it certainly looks like my signature, I accept that. Um, so I assumed ah, that that was a, you know, correct. I didn't read the letter carefully at that stage.

My impression from what you're saying, please correct me if I'm wrong, is that you took it for granted, it didn't occur to you that there was anything wrong with the letter. You saw the letter, you saw your signature, it looked like your signature, you assumed it must have been your signature and

you've proceeded from there. Is that right?---That's correct, yes. I didn't read the details when that was initially presented to me by the ICAC people.

I see?---I didn't read the letter in detail at that point.

10 And how did it come about that you read it, were you asked to look at it more carefully later?---Um, well, I, I subsequently learned that she had never had that appointment so, that was in discussions with Vanessa Madunic very recently. And so then I read the letter in more detail, more critically, and came to the conclusion that it was not conceivable that I had signed that letter.

And could I ask, at whose, at whose initiative did you make your second statement?---(NO AUDIBLE REPLY)

Did you, did you request it to be rectified or did somebody ask you to rectify it?---Um, I, I requested that I change the statement.

20 MR ALEXIS: Professor Hacker, in June 2010, you by that stage understood that Ms Lazarus had submitted a number of invoices and had procured payment of those invoices from the hospital, didn't you?---No, I did not.

When the ICAC investigator attended upon you and took your first statement you were aware, weren't you, that irregularities had occurred in relation to the payment of invoices that Ms Lazarus had submitted to the hospital and had been paid by the hospital?---I, I don't believe, did I make a statement to that effect?

30 Well, let me ask you this then. What did you understand the ICAC investigator was seeking information from you for in June of 2010? ---I was under the impression that there was to be money paid to Ms Lazarus, certainly I was under that impression, yes.

You may not have understood my question. What did you understand the point of the ICAC investigator asking you questions and obtaining a statement from you was in June 2010?---How money had been paid out of the hospital system when no money had come in from the external source.

40 And did you understand that this letter that we've been examining at page 83 of the examination bundle was one of a number of documents which appeared to you to have facilitated the payment out of those moneys? ---Um, it, it, it probably did.

May we take it that when the ICAC investigator attended on you and you gave that person information, you regarded it as a serious occasion because the matter was being investigated by ICAC?---Correct.

And in your statement that you gave you took no issue, that is the first statement that you gave, you took no issue with you writing this letter to Ms Madunic at page 83 of the bundle, did you?---I didn't read it carefully. I was under the impression still that she was appointed to the hospital and I saw the signature as being a very good replica of my signature so I accepted it at face value.

10 But not only did you accept that you'd written the letter in paragraph 35, you go on in paragraph 36, if you could go to that, please, to tell us that the temporary employment arrangements, and I'm at the top of page 11 of your statement, enabled a vetting process to occur with respect to police checks, it enabled her to obtain a swipe card for access, and you also go on to say, "This would also allow her to set up a trust account with the hospital into which the clinical research funds could be deposited. Do you see that? ---That's correct.

20 So you went on in your first statement to not only accept that you'd written the letter, but you had an understanding that the letter associated with temporary employment arrangements would facilitate what you there refer to?---That's correct, because I was under the impression that this had all occurred.

30 Well, can you tell me, please, what occurred last week which caused you to say what you had in your second statement and give evidence to the effect that you did not prepare the letter or compose the letter and you didn't sign the letter?---I, I had a meeting with Vanessa Madunic about another matter um, and um, the issue of Sandra Lazarus came up and um, and I pointed out that letter that I'd written to her and she said that that was, that was not true, that that letter had never occurred, that, that, that Sandra was never appointed to the hospital and that was all news to me.

So is the position that having obtained some further information from Mrs Madunic recently that caused you to reconsider your position and express that changed position as you have in your second statement?---That's correct.

40 All right. Could you turn to page 92 of the examination bundle. And do you see a letter addressed, "To whom it may concern", dated 12 May, 2008, apparently signed by Ms Lazarus as the clinical trial coordinator?---Yes.

Now, in paragraph 65 of your first statement, Exhibit 2, you refer to that letter and you tell us that you have not seen the letter before. Do you see that?---That's correct.

And just for clarity, may we take it that when you said that you hadn't seen the letter before you were referring to the occasion when the ICAC investigator showed you a copy of the document at page 92?---That's correct.

Thank you. You also go on to say that you would not have authorised the circulation of the letter and that Ms Lazarus did not seek any approval from you to write the letter. Do you see that?---Absolutely.

10 And if you were approached in or about May of 2008 for permission for a letter to be written on the letterhead of the cancer centre for the purpose of distribution to prospective sponsors of a clinical trial, would you have had a particular attitude to that?---I would have absolutely opposed it. We weren't doing a clinical trial. We were proposing to do a pilot study and that's very different. So this would have been completely unacceptable.

All right. Thank you. Can I ask you to go to page 95 of the examination bundle and you'll see there a letter from Dr Neiron of the company Sydvat Pty Limited, there in the letter described as the chief executive commissioning officer. Do you see that?---I do.

20 And in your first statement at paragraph 22 you refer to having received that letter, is that right?---That's correct.

And can I ask you whether you received, as your recollection best tells you, that letter in the post or from Dr Neiron or from some other source?---I certainly remember seeing the letter. I, I assume it came in the post. It was in my inbox. How it got there I don't know but I found it in my inbox. My mail's always opened by the secretary and put in the inbox.

30 Do you have any recollection of it being handed to you by Ms Lazarus?---I have no recollection of that but I, I, I wouldn't say that that may not have occurred.

THE COMMISSIONER: Who stamps confidential on it?---(NO AUDIBLE REPLY)

Did it arrive with the, with the word "Confidential" stamped on it or would - -?---I, I, I didn't think it did, I must say I didn't think it arrived with that statement on it.

40 Is there a stamp in your office, a confidential stamp?---No, I don't think so. I don't believe so.

MR ALEXIS: Now, at or around the time of receipt of this letter did you have any communication with Dr Neiron directly?---No.

Have you ever spoken to the man?---No.

Have you ever had any communications with anyone representing themselves as associated with Sydvat or any of the other Sydvat companies referred to at the top of the letterhead or across the bottom of the page?

---No.

Have you ever had any communications with anyone representing themselves from Medex Corporation with a test corporation or Medex Test Australasia Corporation or any such type corporations?---No.

So your only communications on the subject of funding of any pilot trial were with Ms Lazarus and no one else, is that the position?---That's, that's correct.

10

Thank you. Now, in paragraph 23 of your first statement, Exhibit 2, you tell us that you had the understanding that, or you've already given the evidence about funding, that is that no cost would be incurred by the hospital as a result of a proposed pilot project involving the Medex device, do you see that?---That's correct.

And your understanding was derived I gather from this letter that I've just referred you to at page 95?---Yes.

20

And also from Ms Lazarus, is that right?---Well, I, I made it very clear to Ms Lazarus that there would be no, there could be no cost to the hospital or to the department. If she wanted to carry out this study at her own expense that was fine. If she wanted to get sponsorship from some company such as Medex that was fine also but in either case it was to cost the hospital and the department no money.

30

And when you say as you do at the top of page 8 of your statement within paragraph 24 that that proposition was made very clear on a number of occasions, what should we understand about the number of occasions during which the subject of external funding and the cost not being the subject of any expense of the hospital was dealt with?---On how many occasions?

Yes?---It, it wouldn't have been I don't think more than three or four occasions. I didn't see a lot of Sandra Lazarus. She would make appointments from time to time with my secretary to, to meet with me but at this stage I wasn't seeing a lot of her.

40

All right. Could I now take you to the document at page 96 of the examination bundle which is a document entitled Agreement for Clinical Trials. Do you see that?---Yes.

And if you look at the, pardon me, the fourth page of that agreement at page 99 of the bundle, you'll see that there appears to be a signature representing your own adjacent to the date 16 May, 2008, do you see that?---I do.

Now, in your first statement at paragraph 67 you tell us that you have never seen the document before and you have never signed such an agreement with Medex, do you see that?---I do.

And again when you expressed in your statement that you'd never seen the document before, the first time you saw it was when you were presented with a copy by the ICAC investigator?---That's correct.

And if you look at the copy of this document which is attached to your statement, it should be the very last document, you'll see that the copy that you attach was unsigned and dated in hand 16 June, '05 or '08, do you see that?---I do.

10

And if you look at the document at page 99 of the examination bundle you'll see that the location for signature on behalf of the hospital has moved to the bottom of the page and that for Medex Screen Pty Limited is moved up the page if you compare the two, do you follow?---I do.

Now, in your most recent statement you looked at the copy agreement for clinical trials in the examination bundle at page 96 to page 99, is that right? ---Correct.

20

And having done so in paragraph 21 of that second statement you've told us, I think, that you did not sign the copy which bears a signature of your own?---That's correct. I have not seen that before.

THE COMMISSIONER: Sorry, what have you not seen before?---This clinical trials agreement.

That's part of the bundle?---Sorry?

30

You haven't seen, there are two, there are two agreement for clinical trial, two forms of agreement for clinical trials, the one that commences at page 96 of the bundle and the one that is attached to your statement?---Right.

Which is the one that you haven't seen before?---I, I haven't seen either before.

And, well, where, where did the one, do you know where the one came from that's attached to your statement?---I think the ICAC people gave it to me.

I see.

40

MR ALEXIS: And just so we're clear, Professor Hacker, the agreement in the examination bundle commencing at 96 and ending with the signature at 99 is the document that you're referring to in your second statement at paragraph 21, is that right?---That's correct.

And you've said in that statement that you did not sign the document? ---That's correct.

And you've got no recollection of ever signing a document like this?---No, no recollection.

THE COMMISSIONER: Mr, Mr Alexis, where is the, is reference made to the agreement for clinical trials in Mr, in Professor Hacker's first statement here?

MR ALEXIS: Yes, it's in paragraph 67.

10 MR STITT: It starts at 66.

THE COMMISSIONER: Thank you. Yes, thank you.

MR ALEXIS: Professor, could you come through to page 101 of the examination bundle?

MS FURNESS: Sorry, what page was that?

MR ALEXIS: 101.

20

MS FURNESS: Thank you.

MR ALEXIS: And do you see there, sir, a copy of a letter from the Scientific Review Committee concerning the application for ethical approval, it seems to have been sent to you on or about 25 June, 2008? ---Correct.

And you received that letter on or about that date did you? ---I did.

30 And could I take you to paragraph 29 of your first statement, Exhibit 2, where you tell us that upon receipt of the letter you requested a meeting with Ms Lazarus where you showed the letter to her. Do you see that?---I do.

And may we take it that she attended a meeting and you've had a discussion about the content of the letter?---We did.

Did you provide her with a copy of it?---I did.

40 And you told her, as you tell us in paragraph 29 that she would need to address the matters or the questions that have been raised in the letter?---I did.

And if I could ask you to just look at paragraph 30. And you there tell us that Ms Lazarus had not commenced the proposed clinical trial involving the Medex device at that stage. I gather the (not transcribable) you're referring to is the time at which you'd received the letter and had the meeting with her?---That's correct.

And are you able to recall approximately how long after the receipt of the letter that you had the meeting?---Oh, you know, within two or three weeks.

And so within two or three weeks of 25 June, you were unaware of any examinations of patients that have been conducted by Ms Lazarus using the device?---That's correct.

10 THE COMMISSIONER: Why do you, what forms the basis of your statement in paragraph 30 that she hadn't commenced the clinical trial at that stage? How, how did you know that?---Because we had not given her any patients. I made it very clear to her that she couldn't see any patients until we had ethical approval. And she certainly, there was no way she could conduct the study except in the clinic. Nobody ever saw her conducting studies. Of course if they had of done, we would have stopped it. But there was never any suggestion that she was ever likely to conduct the study until ethics approval was through.

20 And when you saw her to discuss the letter of 25 June of 101 with her, was there any discussion about this trial?---I was somewhat annoyed that the application had clearly been very sloppy and, and I told her again that what we were doing was a pilot study and we were testing 10 patients only. And if that in fact looked promising, then we could expand it to more patients. But in the first instance this was for 10 patients. That was made very clear to her.

And what was her response? Did you raise these four matters with her?---I did.

30 And what was her response?---She was accepting of that. She said she'd been careless and presumably copied it from some other ethics applications. But she was accepting of the fact that this, her understanding of it was a pilot study of 10 patients only.

And, and she would make the - - -?---She would, she would make the necessary corrections and resubmit it.

40 MR ALEXIS: Now Professor Hacker, are you able to tell us why it was that the Scientific Review Committee wrote to you and not Ms Lazarus in relation to the application for approval?---Because I was down as the principle investigator.

You understood that you had been described in that capacity in relation to the ethics application that had been submitted?---I, it didn't surprise me that she had put me down as the principle investigator.

And so when you got this letter on or around 25 June, 2008 its receipt was of no surprise, the content may have been but the fact that you got the letter was of no surprise to you?---Well, no great surprise. No.

And you would regard the receipt of such a letter as the ordinary line of communication with respect to subjects concerning the approval or otherwise of ethics applications concerning this test?---That's correct.

10 Thank you. Now in paragraph 32 of your first statement you say that about two or three months later, which you postulate is around August or September, 2008 Ms Lazarus advised you that she had obtained approval from the committee to commence her pilot study using the device. Do you see that?---I do.

Now at or around the time of her telling you that, I gather you had received no letter from the Scientific Review Committee confirming what she'd said?---That's correct.

20 THE COMMISSIONER: Is that the Ethics Committee?---The Ethics Committee, yes.

MR ALEXIS: And did you at the time of her telling you that approval had been given for the pilot regarded as surprising that you'd received no letter from the Committee confirming what she told you?---I didn't think a lot about it, I must say.

30 Why not?---Usually these things are handled by research nurses, fellows and I, I take what they tell me on face value. I've never had a situation before where someone has tried to do research in the department fraudulently. So I should have, I should have checked it, I'll accept that.

But in the ordinary course of ethics approval you, you would receive that approval in writing wouldn't you?---Yes. But I, I wouldn't necessarily get it personally.

Well you'd already received a letter from the Scientific Review Committee rejecting the earlier application?---Ah hmm. No, not rejecting it, asking for some corrections.

40 All right. But - - -?---And I, I assumed that she had made the necessary corrections and that it was only a pilot study of 10 patients, so it wouldn't take a lot of corrections for them to accept that sort of study.

May we take it from your evidence that having been told what you tell us in paragraph 32 of your first statement you took no independent steps to verify what had been said?---That's correct.

And you received no letter from the Ethics Committee confirming approval for the pilot study?---I did not.

And you were prepared nonetheless to allow Ms Lazarus to conduct the pilot study without it?---That's correct.

THE COMMISSIONER: Without what?---Well without sighting the approval which she told me she had.

10 Would you have allowed her to commence the pilot studies in the knowledge that the Ethics Committee had not yet approved the work?---Oh, definitely not, no.

Have you ever done that before?---No. Definitely not.

Is there any practice to that effect that you know of?---To what effect?

To allowing research to be done before Ethics Committee approval has been obtained, but in the belief that it will be obtained at some time in the
20 future?---No, because you have to have (not transcribable) consent form and all of that has to be approved and, no, that, that's, that would not occur.

There's no practice to that effect?---There's no practice to that effect, no.

Not, have you ever heard of that happening before?---No.

MR ALEXIS: I was just going to raise the question of patient consent forms, Professor. Part of the approval process is in relation to the terms of the form of consent is it not?---Correct.
30

And so you must have understood after what Ms Lazarus told you that the form of patient consent had to be settled so that it was then in a position to provide it to patients to obtain their consent before any testing?---That's correct.

Did you take any step to check whether or not the form of consent that Ms Lazarus might use was the subject of any approval by the ethics committee?---It would have been if they had given final approval and it's part of the final approval.
40

You may not have understood my question. Before Ms Lazarus was to undertake any of the pilot tests did you take any step to check whether or not the form of patient consent that she was using was the one that had been approved by the ethics committee?---No, I did not.

Why not?---Again, these are matters that are usually dealt with by research nurses and by fellows in the department and - - -

THE COMMISSIONER: Who in your department would have dealt with this? If it hadn't been you, who was there to do it? What particular individual?---The, the situation is a little different here in that this was someone from outside of the department and, and I accept that that is, is a different situation here. I said to Sandra Lazarus when the application was being prepared that if she needed any help she could speak to my research nurse, Ellen Barlow and I don't know whether she ever spoke to her but it would be at the level of the research nurse that these things would usually be dealt with.

10

Does that mean that the research, one of the tasks of the research nurse would be to check the consent form?---That would normally be something that they would do because they're usually administering the, the, the consent form to the patient.

MR ALEXIS: Was the fact that this was only a pilot study of ten something which influenced what might be regarded as a lack of strict compliance with the Health Department's policy directives on the need for obtaining ethical approval?---That probably did contribute to it, that it was only a small pilot.

20

Now, can I move to some other documents in the examination bundle, pardon me, and could you go please to page 104 and 105 and before you, sir, should be vendor maintenance forms in relation to the vendors described as Wish Consulting Pty Limited and Medical and Clinical Informatics Consultants Pty Limited, do you see that?---Correct.

And could I provide you with the original of those two documents insofar as each contained what appear to be an original biro signature of Ms Lazarus and the one that purports to be that of your own. Now, in paragraph 63 of your first statement, Exhibit 2, you tell us that you do not recall signing these forms for those companies but you then say this, "It does appear to be my signature on both forms as the authorising officer." Do you see that? ---Yes.

30

Now, in your more recent statement, Exhibit 3, at paragraph 15 you refer to these two forms and you say that before being shown them by the ICAC investigator you had not ever seen a vendor maintenance form, "I did not sign these two forms." Do you see that?---That's correct.

40

Now, is it fair to say that in your first statement you seem to have been accepting that the signatures that appear on each of these forms was your own signature?---They appear to have been.

Can you tell me why it was in your first statement when you dealt with the subject of these forms you didn't say then that you had never seen vendor maintenance forms before being shown by the ICAC investigator?

THE COMMISSIONER: I think in fairness - - -

MR ALEXIS: Let me withdraw the question.

THE COMMISSIONER: - - - to Professor Hacker, if you look at page 63, at paragraph 63 of your first statement, you say, "I do not recall signing these vendor forms but it does appear to be my signature." In the later statement, paragraph 15, you say before being shown the two forms, "I have not ever seen vendor maintenance forms," so there is, the difference between the two statements, the first one was that you don't remember signing the forms and the second one and there is an element of doubt in that because I suppose by saying you don't remember you're leaving open the possibility that you might have seen them but you don't remember seeing them. In the second form you say categorically I have not seen such a form, it follows that by the second form you have firmed up and you have discarded the possibility that you might have seen them and you say in absolute terms that you haven't seen them and the question is how did it happen that you firmed up?---Well, once again I had a discussion with Vanessa Madunic and I asked her what the vendor maintenance form. It's, it's not a form that I am normally seeing, in fact I can't recall ever having seen such a form before and I don't know what, what, what it means and she told me that it, it's a form that is filled in to verify bank details. Now, this is not a form that we have in our office. It's presumably kept down in the main administrative offices so I, I don't believe I've ever seen these forms before.

MR ALEXIS: The question I asked you though was why, why in your first statement you didn't say in relation to these forms that you had not seen these forms before?---(NO AUDIBLE REPLY)

That's what you're saying in terms in paragraph 15 of your second statement?---Well, I, I guess I just was, let me see, what did I say? These, these forms were foreign to me when, when I was first shown them. I, I guess I could have said that there then because the same statement would apply then. But I, I really didn't know what the forms were, I'd never seen them before but I didn't make that statement but the statement would still be true.

All right.

THE COMMISSIONER: Professor Hacker, the second statement, your second statement, am I right or am I wrong in understand that this second statement was made at your, on your own initiative? In other words, you asked to correct your first statement?---No, I didn't ask to correct my first statement, no.

Well, how did it come about that you made a statement, in your second statement that you dealt again with what you had said in paragraph 63 of your first statement?---This issue was raised, I believe.

By whom?---At, by ICAC and by, by the lawyers for the hospital.

And then what did you do as a result? Did you think about it or what happened? You see you have moved as I have explained to you from one statement to a later statement?---Ah hmm.

And you've, we are really trying to understand why?---Oh - - -

10 You've become firmed up as I put it to you?---Ah hmm, ah hmm.

You have discarded the possibility that you might have seen them before but don't remember it - - -?---Ah hmm.

- - - and you've adopted the position that you never saw them before without, in absolute terms and the question is why? What, what happened that made you change?---Well, the, the, what has, what changed was the meeting with Vanessa Madunic in which she explained what these forms were and I have never had reason to, to sign a form to verify that the details
20 are correct about a bank account so that I guess made me more certain that I had not seen them before.

MR ALEXIS: And, Professor, having been shown the originals of these two Vendor Maintenance Forms, and particularly the signature that purports to be yours in blue ink, does that change your evidence at all in terms of whether or not you did in fact sign them or not?---I still don't believe, I mean, I had never heard of Wish Consulting for example. That's something I'd never heard of, Medical and Clinical Informatics Consultants, I'd never
30 heard of these entities.

And may we take it that Ms Lazarus never informed you what those companies were and whether she had any association with them?---She didn't mention anything about association with any company, she didn't mention any relationship with sisters being involved. That, that was all news to me.

Now, in relation to Wish Consulting in relation to the first of the two forms you have there, did you ever see at any time any form of agreement between that company, Dr Neiron or Sydvat or any Medex company as described on
40 any agreement relating to the provision of marketing services?---No. No, I did not.

All right. Commissioner, could those two original documents be marked?

THE COMMISSIONER: Yes.

THE COMMISSIONER: Are they being tendered?

MR ALEXIS: Not proposed to at this stage.

THE COMMISSIONER: Sorry?

MR ALEXIS: I wasn't proposing to at this stage.

THE COMMISSIONER: The document with the number 1-1-1-5-1-4 next to Vendor Number is Exhibit 5.

10

#EXHIBIT 5 - VENDOR MAINTENANCE FORM 111514

THE COMMISSIONER: And the document with Vendor Number 1-1-1-5-1-5 is Exhibit 6.

#EXHIBIT 6 - VENDOR MAINTENANCE FORM 111515

20

THE COMMISSIONER: They're both Vendor Maintenance Forms. So when I say document, it's better to describe it as each one is a Vendor Maintenance Form. When you first saw these forms, Professor Hacker, and that is at the time I think that you made your evidence and made your first statement, did you understand the purpose of these forms?---No, I did not.

Do you understand them now, what the purpose is?---I understand from Vanessa Madunic's information that they were verifying banking details for those particular companies.

30

Are these, are these, have you ever signed a Vendor Maintenance Form before?---No.

Have you ever signed such a form since?---No. Never heard of such a form before, never heard of one since.

Has anyone explained to you who, what Wish Consulting does, what its occupation- -?---I had never heard of Wish Consulting until I saw it on that, that ICAC, the form the ICAC people gave to me, but in discussions with Sandra Lazarus, that was, that firm was never mentioned.

40

MR ALEXIS: Professor, could you go to paragraph 37 of your first statement, Exhibit 2. And do you see that you there tell us that you were made aware that Ms Lazarus had placed a requisition in to the hospital to purchase some of the Medex devices to be used in the clinical pilot project? ---Well, like, that would be the process for getting the money out of the hospital, place a requisition.

So your reference to requisition there is a reference to the form of requisition. Is that right?---Yes. The requisition book that we use all the time in the department and which I sign on a regular basis.

Now, insofar as you becoming aware of that as indicated by paragraph 37, when did you become so aware?---At, at, at one point, and I don't recall exactly when, somebody from the pay office, I made a statement that Vanessa Madunic called me, I subsequently retracted that because she said she did not call me, so, but certainly somebody called me probably from the pay office and said to me, "Is it all right to pay some money to Sandra Lazarus for these clinical trials?" And I said, "Yes, as far as I understand there's money been deposited into the hospital account or a trust account or some account, into which money from Medex is being deposited."

Mmm?---So I said, "This is not to come out of hospital funds, this is to come out of funds deposited into that account by the Medex company."

And to whom were you speaking when you conveyed that?---I assume it was somebody from the pay office. I don't know for sure.

THE COMMISSIONER: When was that?---Um, it, it would have been sort of around probably August or something of that- - -

Of two thousand and?---2008.

But- - -?---It could have been a little earlier because there was to be money paid for equipment as well as I understood it, money paid for salary, so- - -

Does that suggest that you accepted that trials had already occurred?---Had already occurred?

Yes?---No, no, no, no. Not at all. But um, equipment would have needed to be purchased.

For the trial?---For the trials, yes.

And did you have any idea of the arrangements that had been put in place for the provision of this equipment?---Well, my understanding would be that she would place a requisition with an invoice that I would sign as the delegating officer and that um, someone in the administrative office, usually Bill Walters, the chief clinical executive, would sign as the authorising officer.

Is this equipment Medex equipment?---Yes.

Well, did you have any idea or any, any knowledge of what arrangements involving Medex had been made for the provision of Medex equipment? ---No. But there was- - -

Is that normal?---Sorry?

Is that normal?---Well, I had information as to what equipment was required, so um, that was early on ah, in my meetings with her, I'd asked her to supply this equipment, this, this information and as I said, I don't think it's an exhibit, but it's, it's in my second statement.

10 Did you know who was going to, who was going to be the original supplier of the Medex equipment?---Well, I think there's only one Medex company.

How is it, why was money needed to pay for that?---Because the units I assume cost money, it's a little computer box and it measures skin impedance and - - -

Do you understand that Medex was going to pay the money for the tests?---I understood that they would pay money both to provide the equipment and to pay Sandra Lazarus a salary for doing the work on a per test basis.

20 Because involved in all of this is the rather odd notion that money was being taken to pay Medex for Medex's own equipment and Medex is suppose to be financing the tests. Do you understand that, do you understand what I'm saying?---Well, what I understood would happen would be that she would (not transcribable) equipment from Medex when it came she would get reimbursed for it. She would then put a requisition in and this company would receive that or receive it Johel Neiron's company was going to put money into a trust, a hospital account and she would take the money out of that account to pay for the equipment.

30 I see. And does it follow then that no test could be carried out until the equipment was acquired?---That's correct. And I never saw any equipment.

Were you ever told when equipment had been acquired?---I didn't, I was never told when the equipment when it arrived, I didn't ever see the equipment.

40 But when you were telephoned to ask whether money could be paid for equipment, you must have thought that equipment had arrived?---I wasn't specifically told money for equipment, it could have been salary. It was just money to be paid to Sandra Lazarus.

MR ALEXIS: And at the time of that conversation which I take it was by telephone was it?---Correct.

Did you have an understanding as to how much money had been deposited, if any, into the hospital?---On the (not transcribable) that I letter which said that \$75,000 would be deposited and so any expenditure up to \$75,000 I

assumed would be correct. I mean, it was up to the Finance Department to know where the money had gone at any rate.

But at any time after receiving that 14 May letter from Dr Neiron did you ever understand that funds had in fact been deposited or transferred to the hospital's account so as to then be available for disbursement to cover any costs associated with the trial?---No, but that's not my responsibility, I mean that's the accounts department.

- 10 So did you just proceed on the assumption that the pledging of money had translated to the payment of money?---That's correct and that money would not be paid out, in fact, if it hadn't been paid in.

All right. And are you able to recall approximately when this telephone conversation occurred about the payment of money?---Um, look it would have been some time July, August, September, I mean, I don't know there would have been in the second part of 2008.

- 20 Could you look at the requisition forms reproduced in the examination bundle at 107, 109, 111, 113 and 115 and Professor can I show you the original requisition book for cost centre number 152070 opened at the carbon copy of requisition ending 209 which you will find in the examination bundle at 107. And would you take a moment to examine please the original carbon copies of each of those requisition forms. I now wish to take to paragraph 49 of your first statement, Exhibit 2. And do you see there sir, you tell us that you can recall signing as the delegated officer on each of the requisition forms and you say it is my signature on each of the forms.---That's right.

- 30 And you then to go on to say, I signed each of the requisition forms in the belief that money would not be coming from the hospital but from a trust account. Do you see that?---That's correct.

And just so that we are clear Professor, the signature that you are referring to there in paragraph 49 is the one that appears on each of the requisition forms adjacent to the box entitled, delegating officer in the bottom right hand corner. Is that right?---That's correct, yes.

- 40 Now you see in the last sentence of paragraph 49 you say that you had a belief money had been placed into the trust account by one of the Sydvet or Sydvat companies in conjunction with the Medex company.---That's correct.

Now as that a belief that you had at the time you say in your first statement your signed each of the requisition forms?---Yes.

How did you come by that belief that money had been placed into the trust account?---Because I had taken Sandra Lazarus down to the administration

and they had indicated that there'd need to be an account set up and I'd assumed that that had in fact, happened. The, what normally happens is that this goes down to administration, they check the accounts very carefully whether it's a trust account or some other account within the hospital and certainly don't release money unless there's money in that account to pay for it. So I assumed that if they were going to pay this money then there would be money there to cover it.

10 So, were you ever told at this point that money had in fact been deposited into the trust account of the hospital?---No.

So why did you have a belief then that at the time you say in your first statement you signed these forms, monies had in fact been deposited into the trust account?---Well, I believe the money had been paid in because I'd received the letter from Johel Neiron.

20 So again, based on the letter which pledged money you assumed afterwards that you in fact, the money pledge had been paid. Is that right?---That's correct, yes.

Now in paragraph 56 of this first statement you tell us that you would never have signed the requisition or approved any monies to be paid if you knew that payment would be coming from the hospital financial accounts. Do you see that?---That's correct.

30 So should we take what you say in paragraph 56 of this statement to indicate that you were aware by the signing of these requisition forms that a claim was being made by each of those companies you refer to, Wish Consulting and the like, and that based on the assumption you made there would be monies available from which those invoices would be paid?---That's correct but that that would be checked by the finance department, that they would not pay money out if there was not money in that account.

40 You said to us a moment ago that you'd never heard of Wish Consulting or Medical and Clinical Informatics Consultants or the other company, Complete Health and Medicine, was it not apparent to you from the requisition forms that each of, certainly the first two of those three companies were seeking payment of invoices for substantial sums of money?---Well I made a subsequent statement in which I deny signing those forms.

I know you did. But when you provided the statement to the ICAC investigator in June, 2010 you seem to have accepted that you signed these requisitions but on the assumption that monies had been deposited into the trust account from which the invoices would be paid. So did - - -?---I did, I did make that statement because I do sign these requisitions commonly. And it certainly looked like my signature. But I did make the comment that, at the time, that I don't understand why Professor Marsden, Associate

Professor Marsden's signature is on the bottom line as an authorising person, because he had no authority to authorise this payment.

But sir, just stepping out of the detail of whether it's your signature or not, did you have any idea in July of 2008 that Wish Consulting and the other Lazarus company were seeking payment of invoices of large sums of money in relation to the conduct of clinical trials?---I did not. I'd never heard of those companies.

10 Well do you have any recollection of seeing these requisitions and noting that some 50 examination tests were being the subject, for example, of a charge of \$16,500?---I, I don't believe that, I certainly wouldn't have signed it if, if the tests had been written there because I made it very clear that this was a pilot study of 10 tests, so, but that figure could have been written in after I'd signed it. But for the reasons I've set out, I, I don't believe I did sign any of these forms.

And those reasons we'll find in paragraph 12 of your second statement, Exhibit 3. Is that right?---Yes, that's correct.

20

So can you explain to us what happened last week which led you to reconsider the evidence that you'd earlier given in the earlier statement to say that you now don't believe that you signed each of these five requisition forms?---Well I, I now know from my (not transcribable) secretary that the requisition book was missing at this period of time. I was aware that it had been missing and, but I wasn't sure for how long or when, but it would appear that it was certainly missing at this time, around July of that year. I now realise that these were five consecutive forms. I certainly didn't ever sign five consecutive forms because there were requisitions being signed probably on a weekly basis for office equipment, travel expenses, that type of thing. I certainly would not have signed for 50 tests because I made it very clear to her that this was a pilot study of 10 tests. I certainly would never have authorised any marketing of the pilot study, so, and I would have read that in the requisition before I signed it. I'd not been advised that ethics approval had been given, so I certainly wouldn't have signed for, I might have signed for equipment on this basis that she needed to get that equipment in advance, but, and maybe there's some salaries, but I certainly wouldn't, wouldn't have signed for 50 tests, because that had not been carried out. And as I have pointed out before, Professor Marsden, Associate Professor Marsden's signature there makes no sense because he has no authority to sign as the authorising person.

30

40

So when you were asked to give evidence about these requisition forms in June last year why was it that you didn't refer to any of those matters that you set out in paragraph 12 of your most recent statement?---I did refer to this oddity of Professor Marsden having his signature there on the last line. But the detail, I mean these are forms that I do sign all the time and they

certainly look like my signature, so I accepted that I must have signed them without - - -

THE COMMISSIONER: You went further then saying that, Professor - - - ?---Sorry?

10 You went further then simply accepting that you may have signed it. If you look at paragraph 49 of your first statement, you say I can recall signing them. That to me means that you're saying that you have an independent recollection of actually signing these particular forms. Did you have that recollection?---Not of these particular forms. I do sign a lot of these forms. And without thinking a lot about the detail, I assumed that I had signed these particular forms.

20 Professor Hacker, these forms, I think all of them or certainly a number have been referred to, each one refers to 50 cervical cancer examination tests. Would you have known in the particular period covered by each invoice whether approximately that number of tests had been carried out on your patients?---I'd have known for sure at this stage that no tests had been carried out.

Well that, you, you would have known for sure at this stage meaning ?---At this time - - -

At which time?---13 July, 2008.

How would you have known that?---Because ethics, I had not been told of the final ethics approval and no patients had been identified for the research.

30 How, can you just explain no patient, that statement that no patients had been identified for the research? What has to be done in relation to the identification of patients for research?---Well once I was told that final ethical approval had been granted, I then asked my research nurse to start to identify suitable patients on whom Sandra Lazarus could conduct these studies.

40 Is there anyone else who could identify such patients other than your, other than this nurse?---Well there, there's another, the second nurse in the clinic also.

The two nurses?---Yeah. And, and I would, I would help with this process as well.

And would you know whether it's happening or not?---Absolutely I would.

And had it happened?---Absolutely not.

Well then it is still, it's a mystery to me, I have to say, why you said in your

first statement that you, that you can recall signing these when looking at the documents they actually tell you that they are claiming for 50 cancer examination, for cancer examination tests, when on your evidence you would have known that no such tests had ever been carried out. I mean it is a mystery to me - - -?---Ah hmm.

10 - - - why, I mean I'm sure you understand that?---Mmm. Yep. I guess in reality I didn't read them carefully enough at that first ICAC meeting. I, I looked at the forms, they're forms I see every week. I looked at the signature, I said, okay, I must have signed it. I did not go into the detail sufficiently.

MR ALEXIS: Now, finally, professor, on the subject of the actual performance of tests, could we come to paragraph 38 of your first statement, Exhibit 2 and I just want to ask you something about your first sentence of that paragraph. You there say, "I am not sure if any clinical trial work was ever commenced with Ms Lazarus using the device." Do you see that? ---That's correct.

20 Now, are you saying there you don't know or you're not sure or you can't be certain or what?---I certainly didn't ever see Sandra Lazarus conducting any test or in fact see any patient. I, I did ask Ellen Barlow to identify some patients for the study and I believe that Sandra Lazarus did come to maybe two or three clinics but I understand Ellen Barlow also did not, was not aware of any actual studies being done.

And the result of what I've, both of those nurses have informed you is set out in paragraph 40, is it?

30 THE COMMISSIONER: That's Nurse Barlow and Nurse Knowland? ---That, that's correct.

MR ALEXIS: They wouldn't have examined more than four or five patients?---That's right.

And is it the case that then you never supervised or observed Ms Lazarus using the device on any patient of yours?---That's correct.

40 Did you ever see any printout from a computer concerning the results of the performance of the test on a patient?---No, I, I did not.

Have you ever been provided with any document which seeks to compile the results of any tests that have been carried out on your patients using the Medex device?---No, I have not.

Have you ever seen or been provided with any document which seeks to draw any conclusions from the conduct of any tests using the Medex device on any of your patients?---No, I have not.

In your second statement, sir, at paragraph 13 you refer to the subject matter of the paragraphs of your first statement I've just taken you to and you say that you're not aware of Ms Lazarus having contact with more than one patient. How should we understand the reference to four to five patients in your first statement and the reference to only one patient or not more than one patient in your second statement?---Just on further discussion with Ellen Barlow. She indicated to me that she didn't think that Emma Knowland had identified any patients and well, they, that's not true. They had identified
10 patients but it was always very difficult to contact Sandra Lazarus apparently and so in terms of Sandra Lazarus actually coming to the hospital and testing patients I understand that that was very infrequent.

And, professor, have you ever seen in your rooms or adjacent to your rooms at the Gynaecological Cancer Centre a folder or a series of folders containing plastic sleeves with patient consent forms, a hard copy of the graph printed out from a computer concerning the examination of a patient using the device and related information concerning that patient?---No, I have not.

20

Commissioner, that's all I wish to ask Professor Hacker.

THE COMMISSIONER: Professor Hacker, what were your, you, you have hospital commitments I understand later today, do you?---I have a clinic which is - - -

What time is that - - -?--- - - - is supposed to - - -

- - - do you have to leave?---It's supposed to start at half past 1.00 but I can
30 get other people to do that if you wish me to continue.

Mr Stitt, Professor Hacker's examination must conclude today.

MR STITT: Yes, your Honour, I would not wish to delay.

THE COMMISSIONER: No, I'm sure you wouldn't. I think in fairness, this is to everybody, if Professor Hacker, you could make those arrangements. Now, I know Ms Furness may want to ask you questions as well and I'm sure you'd like to get this over with as soon as possible?---Ah
40 hmm.

So the best way to do it if your don't mind is to make other arrangements for your clinic because I have no doubt that Mr Stitt will be longer than half an hour?---Okay.

Yes, Mr Stitt.

MR STITT: If your Honour pleases.

Professor Hacker, before I commence asking you specific questions, would you be so good enough as to tell us the circumstances under which you prepared your first statement? Was that a statement that was prepared with the assistance of ICAC investigators?---The, it was a statement prepared with, with two ICAC investigators in my office, yes.

And was there any lawyer present?---No.

10

But when you were interviewed in your office by those two officers did you understand the nature of the inquiries that they were making?---Not fully.

Did you understand that they were making inquiries with pertained to an investigation concerning money going from the hospital allegedly improperly?---I, I understood that there was some issue in relation to money but I didn't have any significant understanding of, of the issues involved.

But did you treat it seriously?---I, I - - -

20

By that I mean the investigation into which you were being drawn, did you treat it seriously?---Yes, I, I, but I also must admit I was rather naïve in accepting signatures as, as prima facie evidence of signing documents.

Well, whether or not you were naïve did you approach the preparation of your statement seriously?---I did.

Did you know that that statement was to be used as a part of an investigation?---I did.

30

Did you believe that it was necessary for you to be truthful and accurate in that statement?---I, I, I did.

Did you believe that it was necessary to be truthful, accurate and complete in any statement which you gave in the course of that investigation?---I did.

May we take it that when you prepared this first statement you did so on the basis that it was truth, accurate and complete?---To the best of my knowledge at that time.

40

Well, you signed each page on the basis may we take it that it was truthful, accurate and complete?---It was as I believed it to be at that time.

Well, the statement makes reference to a number of documents. I take it that the investigators put these documents in front of you?---That's correct.

And did you read them?---Not as carefully as I should have.

Does that mean that you didn't take it seriously?---Well, that would be an interpretation but, but I certainly did take it - - -

Well, I'm asking you, I'm not putting an interpretation, I'm asking you did you take it seriously when you read the documents that they put in front of you?---I was impressed that the signature looked my signature.

10 That wasn't the question with respect, professor. Did you take it seriously when you read the documents that they put in front of you?---I certainly took it seriously and I, I - - -

And, I'm sorry?---And I also was not in control of facts that I subsequently became aware of.

Look, I'm asking you about the first statement. We'll get to subsequent events. But in respect of the first statement, did you have any difficulty understanding the documents that were put in front of you?---No.

20 Indeed, a lot of those documents were very familiar to you, were they not? ---Which documents are you suggesting?

Well, the documents that related to procedures within the department were documents that were familiar to you, were they not?---(NO AUDIBLE REPLY)

MS FURNESS: Well, Commissioner, I object. If my friend wishes to place particular documents before the professor he should do so (not transcribable)

30 MR STITT: No, no, I'm asking about his belief, I'm not asking him about particular documents at the moment.

MR FURNESS: I press my objection, Commissioner.

THE COMMISSIONER: Yes. I think, Mr Stitt, in fairness, if you're going to deal with documents they should be identified. These are pretty general comments. I think the point is made, Mr Stitt.

40 MR STITT: Well, then can I ask you about your second statement. Do you have it in front of you?---I do.

It's dated 11 February, 2011?---That's correct.

Under what circumstances did that statement come into existence, did somebody come to your office or did you go somewhere?---Um, somebody came to my office.

Who was that?---Um, Senior Counsel Furness um, the health lawyer, Andrew Mullins, the ICAC Inspector Kane and I believe there was some other person.

ICAC Inspector Kane was the inspector that took or investigated the first statement. Is that right?---That's correct.

And was that visit to your office at your request?---It was.

10 Did you ask the officers to come to your rooms because you wanted to make a further statement? Is that correct?---I um, had a discussion with the hospital legal team and um, as a - -

The hospital legal team, who was that?---Senior Counsel Furness and Andrew Mullins.

When did that conversation take place, before or after the visit of the investigators?---(NO AUDIBLE REPLY)

20 THE COMMISSIONER: This is the first- - -

MS FURNESS: There were two visits.

THE COMMISSIONER: The first visit do you mean or the second visit?

MR STITT: No, no, no. In relation, only confining this to the second statement.

30 THE COMMISSIONER: Yes?---Roughly around- - -

MR STITT: I'll put the question again if you're confused?---No. That, that, that visit occurred about a week before this second statement.

So sometime in the first week of February?---That's correct.

40 And had you contacted somebody prior to the first week of February, 2011?---I was contacted by um, I think ah, ah, Ms Darling and told that I could have, I could be represented by a lawyer if necessary if I felt that was appropriate. I showed my statement to my own lawyer, to a friend of mine um, and we, we discussed it ah, in the light of information that had been, become available to me only a matter of two or three days before following a discussion with Vanessa Madunic.

So is this the position, that it was actually as a result of a conversation with Ms Madunic that you believed that it was necessary to make a second statement?---That, that discussion certainly um, made me aware that this Sandra Lazarus had never been appointed to the hospital ah- - -

Well, that's not quite the question. Is it as a result of the conversation that you had with Ms Madunic that you decided that you needed to make a second statement, is that the sequence of events?---That was certainly an important factor.

An important factor in the decision to make a second statement and to alter your evidence. Is that correct?---To, to make the evidence more accurate.

10 But you must have understood that in your second statement you were altering your evidence from your first statement. Did you understand that?
---I understood that.

But that alteration was brought about, was it not, because of your conversation with Ms Madunic? Isn't that the truth?---(NO AUDIBLE REPLY)

THE COMMISSIONER: It was an important factor.

20 MR STITT: Your Honour's correct. Isn't that the fact, that it was brought about by your conversation with Ms Madunic primarily because of what she told you?---She told me that this Sandra Lazarus had never been appointed to the hospital.

No, no, please. I'm not asking you what she told you, I'm asking you about the decision which you apparently made to prepare a second statement which altered your first statement and I'm asking you the basis upon which you made that decision. I'm suggesting to you, tell me if it's wrong, that the primary reason for that decision was because of your conversation with Ms Madunic?---That's correct.

30 And it's on the basis of what Ms Madunic told you that you then wished to alter your statement. Is that correct?---That's correct.

And in order to do that you then spoke with somebody from ICAC or the lawyers. Is that right?---I spoke to the lawyers who suggested that it would be preferable to not just submit a supplementary statement but to have another meeting with the ICAC investigators.

40 So the second- - -

THE COMMISSIONER: Sorry.

MR STITT: I'm sorry. I'm sorry.

THE COMMISSIONER: Just to make it clear, the lawyers are your lawyers?---The, no.

The ICAC lawyers?---No. The lawyers are Senior Counsel Furness and Andrew Mullins.

MR STITT: And they're your lawyers?---Well, they're not my personal lawyers, they're representing the hospital and witnesses as I understand it, hospital employees.

Now- -?---And the area health service.

10 Nowhere in your second statement do you make any reference to the fact that you have had these conversations with Ms Madunic, do you?---No.

Was that deliberate?---No.

Was it accidental that you just didn't include it?---The statement was prepared by Investigator Kane, corrected by me and signed.

But corrected by you to make sure that it was truthful, accurate and complete. Isn't that so?---That's correct.

20

Well, you didn't make any reference to the primary reason for making such a statement and you say that was not deliberate. What is the position, professor?---The position is that I was in control of facts that as of February 2010, that I- - -

THE COMMISSIONER: 2011?---Oh, sorry, 2011, that I wasn't um, in July 2010.

30 MR STITT: But you've told us that those facts came from Ms Madunic. Why didn't you make reference to the fact as to the source of your information?---Well, I had- - -

Because you tell us it was the reason or primary reason for making your second statement?---I had no reason to ah, to, to, to hide that fact.

Did you tell your lawyers that it was because of what Ms Madunic had told you that you wanted to make a second statement?---Um, I made them aware that the conversation with, with Ms Madunic had ah, changed my perspectives.

40

But you see it was more than changing your perspective, wasn't it, the second statement? And let me give you an example. Please go to your first statement dealing with the, have you got the requisition? No. It's all right.

Please go to paragraph 48 of your first statement. Do you have it there, professor?---I do.

You are there setting out details of the requisition and the requisition form as you understood it to be. Correct?---Correct.

Then you said at the end of paragraph 48, I only ever gave permission for 10 patients as part of a pilot study. Was that statement correct?---That statement is correct.

Truthful and accurate?---Correct.

10 The next line, I can recall signing as the delegated officer on each of these requisition forms. Is that statement true and correct?---No, that, that is not correct.

So that statement is false. Is that so?---That is so.

And when you say, and it is my signature on each of the forms, is that statement correct?---It appears to be my signature.

20 No, you didn't say that. You said it is my signature. Is that statement correct?---I don't believe it is correct.

So that statement is not correct. Is that so?---That's correct, that's true.

It's false. Is that so?---I believe it's false.

30 But you went on to give a reason as to why you signed each of those requisition forms and please read it. Do you agree with me that you gave a reason why, not only could you recall signing it, but the reason why you signed it. Do you see the reason there?---I do, I do.

Is that reason true or false?---I believed it to be true at the time.

The statement that you've made there in the statement, is it true or false that you had such a belief?---In the, in my present knowledge it's false. I believed it to be true at the time.

40 But the belief that you had was that the monies would not be coming from the hospital but would be coming from a trust. Wasn't that the belief that you always had?---It was.

Well that belief hasn't changed has it?---It has.

Wasn't it - - -?---Because I now, following my discussion with Vanessa Madunic, know that there was never a trust set up. And I asked her specifically why not and she said, because money never came to go into that trust. But I was not aware of that fact.

But the belief that you had as to the source of the monies was to be the trust, not the hospital. Wasn't that so?---That money was to go into that trust from Medex.

I understand that. But you (not transcribable) belief there in paragraph 49 wasn't that always been your belief, that the money was to come from trust and not from the hospital?---Exactly.

10 And that was the reason that you signed the forms wasn't it?---That's correct. That's the reason that I believed that I signed the forms, knowing or believing that the trust had been set up. Only this year did I know that that had not occurred and when I asked why I was told because money was never sent to the hospital.

Well, with great respect, professor, that's not precisely what you said in your second paragraph. Would you be so kind as to go to paragraph 12? ---The second statement?

20 Of the second statement. It's dated 11 February, 2011. Now before I take you to it, is this accurate, this statement was prepared subsequent to your first because 1), of what you were told by Ms Madunic and 2) because your lawyers and ICAC were involved in the preparation of this document. Is that correct?---That's correct.

What you said in paragraph 12, I now believe that I did not sign any of these requisition forms for the following reasons, is it, is that statement true that you believe now? Is that right?---You mean are those reasons true?

30 Well is that, you see what you've said there is I now believe that I did not sign these forms for the following reasons, I now know the department, et cetera, and then you go on with the matters in the bullet points?---Ah hmm.

Are you, I'll withdraw that. You were there stating the reasons why you had changed your belief were you not?---That's correct.

Nowhere there do you mention what you were told by Ms Madunic do you?---No.

40 Well, I'm asking you again was that omission deliberate?---No, it was not deliberate.

Just accidental?---Well, I'd be very happy to add it there.

I'm not asking you - - -

THE COMMISSIONER: I'm not sure - - -

MR STITT: I'm sorry?

THE COMMISSIONER: I'm not sure about how fair this is Mr Stitt. The point about it is what he has explained, that he changed his statement and (not transcribable) is what Ms Madunic told him. That caused him to rethink the whole thing and look at all the forms again. He then discovered that there was no trust. It certainly had not occurred to me that he's changing his belief because there was no trust funds. He's changing his belief because after having discovered that there were no trust funds, he went and investigated the matter and found these dot points.

10

MR STITT: Well, well he hasn't actually said that, but if - - -

THE COMMISSIONER: Well that's how I understand it.

MR STITT: Well your Honour, I'm happy to accept that as, if that, I'm happy to accept that. What his Honour has just put, professor, do you accept that as being the correct sequence? Is that now, do you accept that or adopt that as part of your evidence?---The fact that I was not aware in, in July, 2010 that no trust fund had been set up?

20

MR FURNESS: Well, I suspect Commissioner, that the witness didn't actually hear what you Honour said and did not listen to it with the same intent that perhaps - - -

MR STITT: Dear oh dear.

THE COMMISSIONER: Professor Hacker, you have been asked questions about your belief. Your belief at the time you made the first statement and your belief at the time you made the second statement?---That's correct.

30

You've given evidence that an important factor in the change of your belief as (not transcribable) in the first statement, was your conversation with Ms Madunic?---That's correct.

And Ms Madunic told you something which led you to ascertain that no money had been put into the trust fund?---That no trust fund had ever been set up.

40

No trust fund had been set up and no money had been received?---Because no money had ever been received.

Yes. I understood you, and please correct me if I'm wrong, to be saying that this knowledge caused you to re-examine the forms that you signed and what you did at the time?---Exactly.

And in your second statement in paragraph 7, as appears from paragraph 7, you set out the grounds for your present belief?---That's correct.

MR STITT: Your Honour, I was actually asking about the requisition forms which are in paragraph 12. I'm sorry to interrupt you.

10 THE COMMISSIONER: Well, I, all I'm doing, Mr Stitt, is trying to understand fairly what Professor Hacker is saying and the thrust of your cross-examination in part has been that he changed his belief because of the absence of the payment of the money and the absence of the setting up of the trust funds as reported to him by Ms Madunic and when I put that to you you said that that's not what he said and what I am trying to do is
10 understand fairly without putting, without being unfair to anybody what, what actually the professor is saying because it doesn't seem to me that it's fair in the light of his evidence to say that he changed his belief because of the absence of the money and the trust funds. He changed his belief because of what Ms Madunic said to him, that causing him to re-examine the entire situation. So I did not think that it was fair to cross-examine him on his change of belief without acknowledging that his evidence is to the effect that what Ms Madunic said was highly relevant because it made him examine everything.

20 MR STITT: But none of that appears in his statement, your Honour.

THE COMMISSIONER: I know it doesn't appear in his statement and it's a debating point.

MR STITT: Well, it's not a - - -

30 THE COMMISSIONER: You've, you've, it speaks for itself it's not in his statement. I mean, if you're suggesting that that's dishonestly omitted that's a point you may make.

MR STITT: Well, your Honour, what I am doing at the moment is seeking to explore just how this statement in that form came into existence because the very point that your Honour makes is, is an integral part of it, that, that -
--

THE COMMISSIONER: Now, I'm not stopping you - - -

MR STITT: No, I understand that, your Honour.

40 THE COMMISSIONER: - - - and I'm sorry, and I apologise for having this whole issue ventilated in the way that it has. It wasn't my intention to protect Professor Hacker but it was, from fair cross-examination, but I did think the way in which the cross-examination was proceeding had in it a misunderstanding and I was - - -

MR STITT: Well, if that's so then that's maybe my fault but I'll seek to correct it. May I proceed?

THE COMMISSIONER: Yes.

MR STITT: Would you look please, professor, at your second statement in paragraph 12. We are here dealing with the requisition forms, you understand that?---Yes.

And in paragraph 12 you've set out in dot point reasons which you put forward as justifying what you describe as your now belief. Is that a fair - -
-?---But (not transcribable) that's right.

10

Is that a fair summary of what you were doing in paragraph 12?---That's correct.

And what you there are asserting is that the information in the bullet points has now come to your attention, is that correct?---That's correct.

Because you use the words "I now believe for the following reasons I now know" et cetera?---Right.

20

I'm suggesting to you so you are under no misapprehension that the statements that you've made there in paragraph 12 in fact are not true.

THE COMMISSIONER: The dot points?

MR STITT: The, let's, yeah, the first dot point - - -

THE COMMISSIONER: Sorry, I'm not sure, again, Mr Stitt, I'm not, this is probably my fault but I think it should be made clear whether you are challenging the statements in the dot points or are you challenging his
30 alleged belief, they are two different things?

30

MR STITT: They are and I was at the moment directing them to the belief and the basis of the belief and so - - -

THE COMMISSIONER: Is this the belief that I didn't sign the requisitions? You're not, you're not directing your questions to the dot points?

MR STITT: Well, I will in a moment, yes, yes.

40

THE COMMISSIONER: Oh, yes. Well, I'm trying to find out the basis of this question.

MR STITT: (not transcribable) is correct.

You say in the first dot point that you now know that the departmental book had gone missing for six months. You wanted, I take it, to convey that this

was a piece of information that had now come to your attention. Is that correct?---That, that's correct.

Well, I'm suggesting to you that such a statement is false because you knew long before that the book had been missing for a period of six months. Indeed, you dealt with it in your first statement, did you not and please go to paragraph - - -?---Yes, I, I, I did do that.

10 Well - - -?---I don't, I think it should, this whole section here should be prefaced by the fact that I had a conversation with Vanessa Madunic in which she made it clear to me that Sandra Lazarus was never appointed to the hospital and a trust account was never set up in her name because money was never paid in.

I'm not asking you about that, with respect, professor. I am asking you about the statement in paragraph 12 and particularly the first dot point which you put forward as a reason for changing your belief and if you would be so kind as to go to your first statement, paragraph 42, there you set out as early as June 2010 a description of the missing requisition book do
20 you not and you also said that it had been missing for six months and in paragraph 42 you give approximately the date. Isn't that correct?---That, that is correct.

Well, then, come back please to 12, paragraph 12 in your second statement, dot point, I'm putting to you that that statement is simply false?---The - - -

Do you agree or not?

30 THE COMMISSIONER: Sorry, what is false?

MR STITT: That I now know that the department - - -

THE COMMISSIONER: He said to you that you know, it's false because you now know whereas you knew before?---Right, you could take the now out if you like but I knew then and I now know.

40 MR STITT: No, no, you're putting, you're putting this forward as the reason for altering your evidence and I'm suggesting to you that that reason was simply false. You knew long before, isn't that the truth?---I, I'm, I'm, I'm re-evaluating the whole situation.

No, please, could you answer my questions. You knew long before this second statement that fact as contained in the first bullet point?

THE COMMISSIONER: Well, you've accepted that?---I, I knew long before that that was, that was true.

MR STITT: It must follow that that was not a reason for changing your belief, isn't that so?---But that was not a major reason for changing my belief.

Well, why did you put it in if it's not true?---Well, it is true that, that the book was missing.

10 But you're saying I now know that the book is missing and this is one of the reasons that you changed your belief about signing the requisition forms, you can follow that surely?

MS FURNESS: Commissioner, I object. The witness has on more than one occasion indicated that the word "now" could be left out of that part of the statement. Repeated questions is not going to change his evidence in that regard.

20 THE COMMISSIONER: The point's made, Mr Stitt. It's perfectly clear that Professor Hacker knew before. It is, he is assembly a number of factors and it's a question of weight to be attached to each.

MR STITT: But it's, it's all a question of credibility ultimately, your Honour.

THE COMMISSIONER: Of course it is. I'm not stopping you, proceed. I mean, I think, and all I'm saying is that you've made your point on the first dot point, it is the statement that he now knows is not actually false, it's misleading.

30 MR STITT: Your Honour's probably right.

All right. Do you now agree that that statement is misleading - - -

THE COMMISSIONER: Because you always knew?---I always knew, I accept that.

MR STITT: And the same applies to the second bullet point, that there were five consecutive numbered requisitions et cetera, that statement is also misleading, isn't it?

40 MS FURNESS: Well, I object. It certainly doesn't follow from the way in which paragraph 12's constructed.

THE COMMISSIONER: Well, the point is, Professor Hacker, you always knew that there were five consecutive numbered requisitions in, being those mentioned, you always knew, that's not a new piece of information?---I, I, I don't think that I realised that they were consecutive - - -

I see?--- - - - at the time. I mean, there were five requisitions but I don't believe I realised that they were consecutive because that would be an immediate trigger if I knew that that I didn't sign them because I can guarantee that I never have signed five requisitions simultaneously.

MR STITT: So your evidence is that you did not know that they were consecutive numbers?---That's correct.

10 Look at please at paragraph 45 of your first statement. That's precisely what you swore there is it not? Third line, we were out of the missing requisition book and were consecutive numbers. What you've just said was simply wrong isn't it?---Well, I - - -

Please, what you've just said is simply wrong isn't it?---But I, that's, but I didn't know initially it's wrong.

20 You said unequivocally to his Honour that you did not know that they were consecutively numbered requisitions. And in fact I think you said it twice. And I'm pointing out to you that that evidence is simply wrong isn't it?
---Yes, I, I obviously did know that at the time.

Precisely. Now you have - - -

THE COMMISSIONER: Mr Stitt, perhaps this is a convenient time.

MR STITT: Oh, yes, I'm sorry, yes. Yes, yes, your Honour.

THE COMMISSIONER: You'll finish by 4.00?

30 MR STITT: Oh yes, your Honour. I, I don't, despite what your Honour would think, I don't want to extend this or belabour anything. I really want to - - -

THE COMMISSIONER: Yes, because Ms Furness has got to go and Mr Alexis may want to ask a few questions. Shall we start at quarter to 2.00?

MR STITT: If your Honour pleases.

40 MR ALEXIS: Commissioner, I will seek to ask a couple of questions in relation to (not transcribable)

THE COMMISSIONER: Yes, by all means. Do you want to say something Ms Furness?

MS FURNESS: No. Your Honour, I take it Ms Barlow is still next.

MR ALEXIS: Yes, that's right.

THE COMMISSIONER: Yes. Mr Stitt, how long will you be? I mean he's obviously an important witness to you, so I just need know.

MR STITT: I would think about an hour, your Honour.

THE COMMISSIONER: Yes, well I think Ms Barlow better stay. I'm sorry to be a nuisance about this, but I'm prepared to sit late this afternoon to finish Ms Barlow.

10 MS FURNESS: Well, it will depend Commissioner, on when of course - - -

THE COMMISSIONER: I beg your pardon?

MS FURNESS: It will depend when Ms Barlow starts, of course.

THE COMMISSIONER: That is not in my hand.

MS FURNESS: No, nor mine, Commissioner. Nor mine.

20 THE COMMISSIONER: We can but hope.

MS FURNESS: We can indeed.

THE COMMISSIONER: Right. We'll now adjourn until quarter to 2.00.

LUNCHEON ADJOURNMENT

[1.02pm]