

THE AFTERMATH OF DR DEATH: HAS ANYTHING CHANGED?

■ **Bob Birrell and Andrew Schwartz**

The Bundaberg Hospital Commission of Inquiry into the surgical performance of Dr Jayant Patel has put the issue of accreditation of Overseas Trained Doctors on the front page. This review of the issue indicates that notwithstanding the seriousness of the problem, Australian Commonwealth and State Governments have done little to ensure that there will be no repeat of the Patel experience.

Controversies about the number of overseas-trained doctors (OTDs) and their readiness to practise medicine in Australia have come to a head in the scandalous outcomes of the surgical procedures conducted by Dr Jayant Patel at the Bundaberg Base Hospital between 2003 and 2005.

In retrospect, the results of Dr Jayant Patel's work seem to be an inevitable outcome of the lack of any systematic evaluation of the skills of the increasing number of OTDs recruited to medical work in Australia on a temporary basis. The circumstances leading to this situation were as follows.

- Partly as a consequence of faulty advice from Australia's medical manpower planners, the Australian and State Governments allowed a serious shortage of general practitioners, hospital doctors and specialists to develop in Australia through the 1990s and early 21st century. Despite growing evidence of the magnitude of this shortage (it has reached desperate situation in some specialties and in non-metropolitan areas), there was no increase in the number of domestic student places in medicine in Australia between the mid-1980s and 2004.
- As a result, medical employers have placed increased reliance on OTDs recruited to Australia on temporary visas to fill vacancies. This reliance has been acute in regional areas and in parts of the

public hospital system where domestically trained doctors have shown little interest in working. This lack of interest is mainly because of the low income earned from such work relative to private practice.

- The rules governing assessment of OTDs qualifications and suitability to practise in Australia date to an era when most were drawn from the UK and thus there was no concern about the standard of qualifications. However, since the late 1990s, when the supply of UK-trained doctors has proved inadequate to meet the growing demand, Australian employers have placed greater reliance on doctors trained in Non-English-Speaking-Background (NESB) countries.
- As a result, employers have increasingly drawn on doctors trained in non-western settings where relatively little is known about the range and standard of skills. In some states there have been no parallel changes in the selection process. With the exception of some senior specialists, OTDs from NESB countries who have been selected to fill 'area of need'¹ positions have not been required to undergo a formal assessment of their English skills, medical knowledge or clinical capacity. Instead, they have been appointed on the basis of recommendations from medical recruiters and judgements of employers —

including State Health authorities and managers of GP practices. The priority of these employers has been to get the positions filled. For their part, the State Registration Boards responsible for providing provisional registration of these doctors have accepted the recommendations of the employers without any independent evaluation of the OTDs.

- Over recent years there have been various inquiries and reports critical of these arrangements and recommendations that OTDs undergo a preliminary assessment of their capabilities before being registered to practise in Australia. The State and Commonwealth authorities have largely ignored these reports.² Instead, the focus has been on facilitating further recruitment of OTDs. As indicated, the main focus has been on temporary residents. Some permanent resident OTDs who have not completed their Australian Medical Council (AMC) examinations have also been appointed to temporary positions, especially in the public hospital system in Victoria. But there has been little government effort to facilitate the upgrading of permanent-resident OTDs' qualifications so that they can contribute to resolving the shortage of doctors in Australia. Permanent resident OTDs cannot gain full registration to practise in Australia until they complete the AMC examinations. This arrangement has produced the anomalous situation that OTDs trained in non-western medical schools who enter Australia on temporary medical visas can practise here without any formal review of their qualifications, yet permanent resident OTDs (with the exception of the few who have found temporary positions) cannot.

- In the case of OTD specialists on temporary visas, the Australian specialist colleges continue to play a role in

accrediting relevant specialists. However, the extent of this role varies by field and level of appointment. In the case of surgery, the Royal Australasian College of Surgeons (RACS) evaluates surgeons seeking appointments at senior levels but not OTDs who may perform surgery as part of their role as hospital medical officers. Even this specialist college role has been under attack, and not just from representatives of OTDs who feel that the Australian colleges are prejudiced against overseas specialist qualifications. RACS, in particular, has been criticised by some State Health Departments and by the Australian Competition and Consumer Commission (ACCC) for allegedly using its powers over the credentialing and training of surgeons to limit entry into the surgical workforce. According to an ACCC review in 2003, this was partly a product of the College's excessive zeal in maintaining 'unreasonably high' skill standards, and partly because RACS has an interest in restricting entry, because this produces 'higher incomes for surgeons'.³ The ACCC's attack on specialists has been mischievous. It reflects a misguided enthusiasm to impose market principles on the profession. As the Patel case has demonstrated, RACS' interest in standards should be supported — not denigrated as part of an alleged plot to bolster a professional closed shop.

- Such has been the shortage of surgeons in regional areas in recent years that employers have taken to recruiting OTDs and sometimes Australian-trained doctors with limited surgical experience as hospital medical officers in non-accredited surgical positions (that is positions where RACS does not have a formal training role), but with the responsibility to conduct surgical procedures. The doctors in question perform this surgical role with varying

degrees of supervision (since sometimes no fully accredited surgeon is at hand to do the supervision, as the Hervey Bay Hospital case discussed below illustrates). These appointments are usually made without any review of the doctor's surgical expertise by RACS. Though aware of the practice, RACS has tolerated it. This is how it came to pass that Dr Patel was able to practise as a senior surgeon without any review of his credentials or his surgical skills by RACS. He was appointed initially to the Bundaberg Base Hospital from the United States as a Salaried Medical Officer and not as a senior surgeon. Why RACS has not gone public on this situation is not clear. It may be that the attacks on the organisation for alleged 'protectionism' have inhibited its response. RACS' main concern is to protect the interests of fellows of the College. These interests are not directly threatened by the employment of non-accredited surgeons in the public system.

- For their part medical employers, including the state Health Departments appear to have tolerated this situation partly because of their desperation to obtain the surgical services in question, but also because it is an inexpensive option — costing far less than would be the case if they had to employ qualified surgeons at market rates. According to Anthony Morris QC, (Commissioner of the Bundaberg Hospital Commission of Inquiry) another reason why Queensland Health, at least, has focussed on such appointments is that the incumbents don't create trouble — like local private practitioners may if they don't like what they see happening in the public hospitals. Morris states that: 'Overseas Trained Doctors are much prized, because they are not only financially

dependent on Queensland Health — their very right to remain in Australia is dependent on their not making waves with their employer'.⁴

THE BUNDABERG HOSPITAL COMMISSION OF INQUIRY

The experience with Dr Patel has put all these practices under the microscope. As with other OTD appointments to Hospital Medical Officer positions, Patel did not undergo any preliminary assessment of his medical knowledge or clinical skills. He was appointed because of his surgical background, but, as noted, because the appointment was not at a senior level, neither Queensland Health nor the Queensland Medical Board referred his appointment to RACS for a review of his credentials. In this respect the Queensland authorities were following the practice in place elsewhere in Australia. Patel was almost immediately promoted to the position of Director of Surgery, a position he had not originally applied for.⁵ This was clearly against the law in Queensland because Patel was not registered on the specialist register held by the Queensland Medical Board. Again, there was no reference to RACS as regards his surgical skills, presumably because the appointment was an internal one. If it had been a new appointment RACS would normally have assessed his credentials.

The only assessment made of Patel was the Queensland Medical Board's review of the credentials he presented when seeking registration. These, the Inquiry has established, did not include crucial documents indicating past censures and disciplinary measures taken against him. One of these documents was an attachment from the Oregon Board of Medical Examiners, which indicated that Patel was not permitted to perform 'surgeries involving the pancreas, liver

resections, and ileoanal reconstructions'.⁶ Alarm bells should have rung for all involved when Patel was originally appointed. Questions should have been asked about why he was interested in moving from the lucrative United States surgical scene to a relatively poorly paid Australian outpost. Patel subsequently went on to carve his way into Australia's medical history over two years before being brought to account. Patel did have U.S. qualifications as a surgeon. But just as should always be the case with Australian-trained specialists, he should not have been let loose without a probationary period involving close supervision of his work.

It was not as though Patel's experience was unique. There had been similar well publicised cases within the Queensland regional hospital system. One of the significant contributions of the Bundaberg Hospital Commission of Inquiry to our knowledge about the supervision of surgery is its release of a report into one of these cases. This concerns a report into orthopaedic health care at the Hervey Bay Hospital.

When writing about the issue of accreditation of OTDs in 2004, one of the authors (Birrell) illustrated the potential problems with the existing accreditation system by reference to the experience of two Fijian surgeons employed in the orthopaedics areas at the Hervey Bay Hospital. Subsequently, Queensland Health commissioned an Inquiry into this experience (hereafter termed Review of Orthopaedic Health), which was prepared by two Australian fellows of orthopaedic surgery. The report was released by the Bundaberg Hospital Commission of Inquiry. The experience is worth detailing because it shows just how desperate the shortage of doctors is if a public hospital was prepared to appoint

doctors who were simply not qualified for, or capable of performing, the tasks required for the job.

The two Fijian surgeons in question were graduates in medicine from the Fiji School of Medicine. Neither were graduates in surgery. However both had completed short 'diplomas' conducted by the Australian Orthopaedic Association (AOA) (the professional body representing orthopaedic surgeons in Australia) in Fiji which were designed to give some introductory expertise in the orthopaedic discipline. As the Report states the 'diploma is not, and has never been, recognised or considered as a qualification in orthopaedic surgery by the AOA or the Royal Australasian College of Surgeons'.⁷ Nonetheless it was on the basis of this 'diploma' that the two Fijian doctors gained Senior Medical Officer positions in the Hervey Bay Hospital.

The two conducted surgical procedures, nominally under the supervision of another OTD, in this case one who was a Fellow of RACS. As the inquiry noted, the supervisor was often absent from the hospital, thus leaving the two doctors to practice for most of the time with 'little or no supervision'.⁸ Their work was critically assessed by staff interviewed. In some cases the procedures conducted went spectacularly wrong. It was reported on the authority of Dr Blenkin of the Australian Orthopaedic Surgeons Association late in 2003 that 'the femur of a young man "exploded" after one of the doctors nailed a pin into the wrong end'.⁹

In the case of one of the two, the Review of Orthopaedic Health states:

At interview, Dr Krishna revealed no personal insight of his shortcomings with respect of patient care issues, management of severe trauma, or clinical care. A number of clinical scenarios were put to him, and he was unable to respond appropri-

ately to even the simplest of items despite being fluent in English. The Investigators were seriously concerned about his ability to carry out minor clinical reasoning and could find no evidence of any ability to undertake advanced clinical reasoning.¹⁰

Krishna was employed for several years doing surgery in an Australian public hospital. It is a scenario which has probably been repeated in other hospitals. OTDs have been pressed into frontline medical positions across regional Australia and in the public hospital system without systematic assessment of their medical capacity because employers have regarded them as the only available option. In particular, OTDs play a major role in the emergency departments of public hospitals where, because of the irregular hours, they often practise without supervision. Many of these doctors do a splendid job and without them the medical system would collapse. But, as has been confirmed by the Patel experience, it is a risky venture which should not be occurring.

REGULATION OF OTDs SINCE

PATEL

There have been changes since the publicity associated with the 'Dr Death' inquiry, some of which were in process at the time of the inquiry and others which have ensued since. The most important are as follows.

- All the State Medical Boards now require OTDs to achieve a score of seven on the IELTS English proficiency examination as a precondition of registration. This provision, designed to ensure that OTDs can actually communicate with their Australian patients, was in train prior to the Bundaberg inquiry.
- The Australian Medical Council (AMC) is proposing to implement a

medical knowledge test for all OTDs seeking temporary medical visas in Australia. The AMC is currently preparing this test in co-operation with Canadian Medical authorities. It will be in a similar form to the multiple choice test currently administered to permanent resident OTDs seeking accreditation to practice medicine in Australia. This initiative was also in train prior to the Bundaberg inquiry.

There is, however, some doubt about whether this test will go ahead, because there is no commitment at this stage from the Commonwealth or State Health authorities and the Medical Boards to enforce it. The Minister for Health and Ageing, Tony Abbott has recently stated that he does not want to be involved — he is content to leave the matter to the states. In his words, 'I'm not going to buy into a quagmire where the Federal Government has responsibility but no authority'.¹¹ The State Health departments and employers will be reluctant to endorse the scheme because they are aware that, if implemented, it is likely to decimate the recruitment of OTDs to Australia. This is because it will have to be a requirement for registration of all OTDs seeking temporary visas, including those from the UK — most of whom stay in Australia for short periods, not unlike working holiday makers. The British still constitute the main source of temporary OTDs. Most are young, recent graduates. Many will go elsewhere rather than take such a test. As for OTDs from NESB countries, the test will be a potent disincentive to temporary migration to Australia.

Aside from these two developments there has been no change in the policies of the Commonwealth or State Government authorities regarding the recruitment and placement of OTDs on tempo-

rary visas. None have taken unilateral action to institute a formal test of medical knowledge, clinical skills and a compulsory period of supervised medical practice, as is the case in the United Kingdom, Canada and the United States. None have moved to require a compulsory probationary period for OTDs performing specialist functions in the public hospitals which involves strict supervision of their work. Patel could happen again.

The Commonwealth has kept in place the incentives to promote recruitment of OTDs announced as part of its Strengthening Medicare package prior to the 2004 Federal Election. These incentives included an accelerated recruitment program.¹² The numbers of OTDs visaed under the temporary entry visa category for doctors (visa subclass 422) has increased from 1,419 in 1999-2000, to 2,496 in 2002-03, 2,428 in 2003-04 and 3,074 in 2004-05. As of June 2005 there were 2,437 OTDs in Australia on the 422 visa, up from 1,636 in June 2003 and 1,237 as of June 2001.¹³ In addition, DIMIA is also encouraging OTDs to apply under the long-term business visa category 457. In 2004-05 some 72 OTDs were visaed under this visa subclass, compared with 18 in 2003-04. The reason for this encouragement is that it is possible to apply for the 457 visa class on the internet — thus speeding up the visa issuing process. As with the 422 visa, OTDs need approval from the relevant State Medical Board before the visa will be issued.

Despite the Patel tragedy, it is still full steam ahead as regards the recruitment of OTDs on a temporary basis. The Bundaberg Inquiry did not itself announce any recommendations for tighter assessment of OTDs prior to its demise in September 2005. This occurred after a Judge of the Supreme Court of

Queensland declared that its Commissioner, Anthony Morris QC, was guilty of bias in his direction of proceedings. However, Morris has indicated his views, in a submission presented after this ruling, to the Commonwealth Standing Committee of Health and Ageing Inquiry into Health Funding. The first of Morris's many recommendations for reform is as follows:

First the need for Overseas Trained Doctors either to work under supervision, or, where that is not feasible, to work in a tertiary hospital for a probationary period before being sent to a location where the doctor will be working without supervision.¹⁴

But the Australian health authorities have not made any move to act in this direction. As various medical authorities have made clear, this lack of assessment of the preparedness of OTDs to practise in Australia is totally unsatisfactory.¹⁵

On the face of it then, it seems that little has changed. However, appearances can be deceptive. There have been profound changes in the circumstances governing the employment of OTDs. These changes are likely to impact severely on the capacity of Australian employers to recruit OTDs. They include the following.

- OTDs now face a hostile working environment. Anecdotal evidence indicates that they face a suspicious public in the aftermath of Patel. Any doctor with a foreign name or appearance is likely to be affected. OTDs are likely to be particularly reluctant to take on medical employment in regional settings where there is not much social support.
- OTDs who do apply for positions face much tougher Medical Board assessment of their credentials than was the case before Patel. We understand that most Boards are now requiring certificates of good behaviour covering their entire medical careers. This is, of course, a

reaction to the Queensland Medical Board's failure to note Patel's American record of censure. Applicants who have worked in several Asian or Middle Eastern countries will find it very difficult to procure such statements. This is because of the poor quality of record keeping in some of these medical jurisdictions.

- Such is the suspicion about the credentials of OTDs that, in the case of the Medical Board of Victoria, the Board is currently unwilling to proceed with applications for 'area of need' positions as General Practitioners unless the applicant has at least two years experience in Great Britain, Ireland, Canada, USA, Singapore or South Africa.
- In several states, it is now more difficult to establish an 'area of need' classification (usually a prerequisite before an employer can sponsor an OTD). This is because state health authorities are allowing local doctors a greater role to contest the designation. For their part, Australian-resident doctors have long argued that the previous liberal arrangements regarding 'area of need' designation have worked against the interests of local doctors. In effect, they have brought in unwelcome competition. Local doctors were vocal in expressing this view during the course of the Bundaberg Hospital Commission of Inquiry.

As a consequence of these develop-

ments, employers will find it much more difficult to recruit OTDs than has been the case in the recent past. If so, in the absence of other changes, the medical shortage in Australia will worsen. The Australian Government has acted to increase sharply the number of medical school places. However, it will take a decade before the extra output helps fill vacancies and much longer for its cumulative effect to have a noticeable impact on the supply of doctors. In the meantime, as demand for medical services increases, supply problems are likely to worsen, as will the need to recruit more OTDs. As Table 1 shows, these problems will be exacerbated by retirements. The Australian medical workforce, especially surgeons, is heavily weighted (relative to all other employed professionals) in the 55 plus age group.

There is one potential solution. This is to make greater use of the thousands of doctors already in Australia who are permanent residents but who have so far been unable to pass the AMC's medical knowledge and clinical examinations. It is extremely difficult for these OTDs to pass these tests since, in the case of the medical knowledge test, it requires skills in speed reading of multiple choice questions as well as a wide knowledge of medical issues. To pass, most OTDs need a period of sustained study. For men and women with family and income responsibilities it is often hard to find the time and the

Table 1: Age distribution of employed doctors and other professionals, Australia, 2001

	Age group					Total	Number
	<35	35-44	45-54	55-64	65+		
General Medical Practitioners	28	28	25	12	6	100	31,984
Surgeons	16	28	23	23	10	100	3,245
Other Specialists*	19	33	26	16	6	100	11,730
Total	25	30	25	14	6	100	46,959
All other professionals	36	28	25	9	2	100	1,467,137

* the "other specialists" group mostly comprises anaesthetists, psychiatrists, specialist physicians, obstetricians and gynaecologists, radiologists and pathologists.

Source: ABS Census 2001 customised matrix

finance needed to do this preparation.

The OTDs in question need bridging courses and financial support while doing these courses. Unfortunately the Australian Commonwealth and State Health authorities have shown little interest in providing such assistance. No additional help has been forthcoming since Patel. The Australian health authorities do not seem to realise that they may not have much choice in the matter. For reasons discussed above, it is going to become harder to attract temporary-visited OTDs to Australia. Yet the need for their services will grow over the next decade. The present situation is that OTDs with training from non-western medical schools are being recruited in increasing number on temporary resident

visas and allowed to practice without any assessment of their medical knowledge and clinical skills. Yet permanent resident doctors from the same countries have to pass the AMC accreditation examination before they can gain full registration. There is an urgent need to provide the assistance these doctors require to bring them up to the levels demanded for safe and efficient practice of medicine in Australia.

It might be imagined that after the Patel experience that governments would have acted with urgency to do what innumerable reports and inquiries have recommended — that is, to properly assess and manage the medical services provided by OTDs. Yet as this review indicates, nothing much has changed.

References

- ¹ The rules governing the issuance of visas to OTDs generally require that they the relevant state government identify the locality where the OTD is to be employed as an 'area of need' as measured by the existence of vacancies for doctors.
- ² Bob Birrell, 'The regulation of medical practice in Australia, Canada, United States and Britain', *People and Place*, vol.12, no. 3 2004, pp. 49-50
- ³ Draft Determination, Application for Authorisation, The Royal Australasian College of Surgeons, February 6, 2003, ACCC, p. v
- ⁴ Anthony Morris, QC, submission to the Standing Committee on Health and Ageing , Inquiry into Health Funding, Submission no. 72, 7/9/05, p. 18
- ⁵ *ibid*, p 14
- ⁶ Bundaberg Hospital Commission of Inquiry, Interim Report of 10 June 2005, p. 5
- ⁷ A Review of Orthopaedic Health Care in the Fraser Coast Health Region, Commissioned by the Director General of Queensland Health, May 2005, p. 10
- ⁸ *ibid*, p. 18
- ⁹ H. Thomas, 'Surgeons lack qualifications' *Courier Mail*, 3 November 2003.
- ¹⁰ A Review of Orthopaedic Health Care, *op cit*, p. 19
- ¹¹ Tom Noble, Abbott rejects tests for overseas doctors', *The Age*, 30 May 2005
- ¹² Bob Birrell, *op cit*. pp. 44-45
- ¹³ Department of Immigration and Multicultural and Indigenous Affairs, unpublished
- ¹⁴ Morris, *op. cit.*, p. 26
- ¹⁵ Barry McGrath, 'Integration of overseas-trained doctors into the Australian medial workforce', *MJA*, vol. 181, no. 11/12, 6/20 December 2004, pp. 640-642