

Maddison, Richard

From: Dadd, Adrian
Sent: 15 October 1998 11:27
To: Maddison, Richard
Subject: Death Through 'Neglect'

Richard,

Reference your query about a week ago, relating to the elderly lady who died in hospital where the relatives are alleging 'neglect', sorry for the delay in getting back to you but I've been snowed under.

The only offence that seems to be a possibility, in criminal law, is manslaughter. This would only become a possibility where there was the existence of a *duty of care*. A person could become liable for manslaughter if they have a *positive duty* which arises out of their *occupation*. It would seem that doctors and nurses would have a positive duty of care toward a patient. However it seems that the liability for manslaughter does not arise where the death is not a *direct and immediate* result of the personal neglect of the person who has the duty.

From what little I know of the circumstances surrounding the case you are dealing with it seems unlikely that manslaughter would be appropriate for the following reasons:

1. The 'neglect' was more of a corporate issue than individual to one particular person.
2. The death occurred for a number of reasons and was not the direct and immediate result of 'neglect'.
3. Were the actions of the hospital staff gross negligence or merely inadvertence? From what you have said it seems to be the latter which would be insufficient for manslaughter.

I appreciate that this is a brief overview and if you want more detail on any area please give me a shout.

Regards

Adrian Dadd