

Restricted - investigation

CMO

From: Michael Evans IIU
30 September 2003

cc:

Code A

Janet Walden IIU

Code A**Professor Richard Baker's Review of Deaths of Patients at Gosport War Memorial Hospital****Issue**

We have received a final draft of Professor Baker's Report (which is now only subject to a further legal view on defamation). This requires a formal acknowledgement and a decision is needed on next steps, including publication and possible wider dissemination.

The police have asked Professor Baker for a copy of his report and Ann Alexander (the solicitor who represents relatives of previous patients at Gosport Hospital) is likely to ask to see the report. Simon Tanner at the SHA has also asked about it.

Timing

2. An early decision would be appreciated. This will allow a proactive approach to managing distribution, if any.

Background

3. On 5 September 2002 you commissioned Professor Richard Baker to undertake a review of patient deaths at Gosport Hospital. The Terms of Reference are attached at Annex A.

4. The police investigation, into 62 deaths, is continuing. We understand that a panel of experts has identified some of these cases as needing further scrutiny. These are unlikely to be confirmed before Christmas, with investigations probably being completed and a file going to CPS sometime during summer 2004.

5. The internal management review and the return of CHI to conduct a further investigation have been put on hold pending the outcome of the police investigation. We understand that Dr Barton, the GP whose work as a clinical assistant is at the centre of these investigations, continues to undertake her GP duties only. She has been referred to the Professional Conduct Committee of the GMC but this is on hold pending the outcome of the criminal investigations.

6. The police did not ask for Professor Baker's review to be suspended while they conducted their enquiries. Professor Baker's Report was received under cover of his letter dated 3 July

2003. The report has now been considered by SOL who have advised in general terms about publication (see below). We await further advice about whether any part of the report could be considered to be defamatory should it be published or circulated more widely.

Publication or circulation?

7. The formal position of the report is that when the final version is agreed with Professor Baker following legal checks it becomes the property of the Department, which is then responsible for making any decision about further publication or circulation.

8. Professor Baker has, not unexpectedly, been asked by the police to share his report with them. He has already asked you for advice about this. Dr Simon Tanner at the SHA has written to ask for advance notice of Professor Baker's conclusions, and it is very likely that Ann Alexander, who represents the relatives of patients who have died at Gosport Hospital, will seek a copy.

9. Our legal advice is that even if a decision is made to publish this report (and as far as I am aware no statement has been made to say that the report will be published) then this should not take place until at least a decision is made as to whether Dr Barton is to be charged with any offences.

10. SOL's advice is that:

- the report is potentially damaging to Dr Barton
- publication could therefore prejudice any criminal trial
- even if Dr Barton is not charged then the report would be damaging to her (although not necessarily in a defamatory sense).

11. As a result, we are advised that if publication is to be considered then this should not take place at least until the conclusion of the police investigation. It can be argued that if there really is an imperative to publish, its timing will be important: our advice is that it should be done sooner rather than later, in order to reduce its impact on any future trial. We would also need to seek the views of the police and CPS before making such a decision.

12. If you agree that a decision on publication should not be made until the conclusion of the police investigations and any legal proceedings, or if you decide that the report is not to be published in any event, then we need to consider who should receive a copy of the report in the meantime. Those who appear to have an interest include:

- the police, who have already asked Professor Baker for a copy;
- the GMC, who have postponed proceedings pending the outcome of the police investigation;
- Dr Barton, who I understand has not yet seen the report in its entirety;
- Dr Simon Tanner, who has responsibility for co-ordination at the SHA.

13. SOL's advice is that the report is of great relevance to the police and should be released to them, although we will need to seek assurances about confidentiality if you decide that the report is not to be published more generally. It is arguable that the GMC should also receive a copy from you, in confidence, to help inform any decision they may wish to make concerning patient safety. For the same reason, Dr Simon Tanner should also receive a copy to inform any decision by the SHA about Dr Barton's practice and any further action that may need to be taken locally.

14. If you agree that the police, the GMC and Dr Tanner should receive a copy of the report then fairness would require Dr Barton to receive a copy. She would then know the foundation of any allegations based on the contents of the report. I understand that the GMC, if it receives the report, is in any event likely to want to copy it to Dr Barton at some stage so we could take the initiative and provide her with a copy of the report rather than wait for the GMC to do so.

15. If you agree on this circulation it would be appropriate to write beforehand to Professor Baker to seek his comments; and to the police to seek confirmation that such circulation would not prejudice their investigations. I attach draft letters at Annex B1 and B2. On receipt of their responses I will provide draft letters to cover distribution of copies of the report (and by then we should have received final advice from SOL).

16. We are likely to receive a request from Ann Alexander, who represents the relatives of patients who died at Gosport Hospital, for a copy of the report. We do not need to make any decision until such a request is made, but it may be helpful to consider possible responses now in the context of the wider circulation mentioned above. Clearly, acceding to such a request would be close to full publication as there would be little chance of preventing a leak. This would have the risks of publication without the benefits. One option may be to agree to her having a copy but on the condition that it is not shown to anyone else (including her clients). There are precedents for such an approach although it is difficult to see that it would be attractive to her. Another option may be to ask Professor Baker to provide a summary that can be shared more widely, although we would need to take the view of the police about this.

17. However, a decision can wait until a request is made although in the meantime, because she has asked, Professor Baker should let Ann Alexander know that he has finished his work and has passed his report to the Department.

Conclusion

18. You are asked:

- if you agree that a decision on publication of Professor Baker's Report awaits the outcome of the police investigations and any criminal trial;
- alternatively, that the report should not be published in any event;
- that the report should be copied in confidence to the police, the GMC, Dr Tanner and Dr Barton;
- that before doing so we write to Professor Baker and to the police to seek their views; and

- that we consider later any request by Ann Alexander for a copy of the report.

By email

Area 543B SKH

Code A

Annex A

Review of Deaths of Patients at Gosport War Memorial Hospital

Terms of Reference

To conduct a clinical audit to identify unusual trends or patterns that may raise serious concerns about the care of elderly patients at the hospital, to cover:

- (i) patterns of observed compared to expected deaths in particular age groups in the hospital and relevant general practice patients;
- (ii) deaths showing unusual clusters by place of death and time;
- (iii) certified cause of death in relation to medical history; and
- (iv) prescribing of opiates and related sedation.

Annex B1

DRAFT

In confidence

Professor Richard Baker
Clinical Governance Research and Development Unit
Division of General Practice and Primary Health Care
Department of Health Sciences
University of Leicester
Leicester General Hospital
Leicester LE5 4PW

Dear

Further to my letter of 12 September, I have now received legal advice about your draft report although I am still awaiting final guidance from the Department's lawyers.

I think that it is clear that your report is potentially damaging to Dr Barton and could, if published, prejudice the police investigation and any subsequent proceedings. For this reason we have taken the view that [any decision on wider publication must await the outcome of the criminal investigations][your report will not be published].

Having said that, I know that the police have asked you if they may have a copy of your report. I believe that the report is of considerable relevance to the police investigation and we agree in principle that they should have a copy. However, given our decision not to publish the report [at this stage (if at all)] we will need first to seek an assurance about confidentiality from the police, subject of course to the requirements of their criminal investigation. One outcome of this may be a request by the police to discuss your findings with you, or perhaps conduct a formal interview. In that event please let me know if you would like advice about your position.

I also consider that the GMC should receive a copy of the report because I understand that they have an outstanding complaint against Dr Barton. My understanding is that this is suspended pending the outcome of the police investigation, but I feel that I should provide them with any information I receive that may assist their consideration of this case.

For similar reasons I believe that the report should also be copied to Dr Simon Tanner, the Medical Director at the SHA, as he has responsibility for ensuring continuing patient safety locally.

The question has also arisen about sharing the report with Dr Barton. Given that we would want to copy it to those people I have already mentioned, it would seem fair for Dr Barton to receive a copy, again on condition that it remains confidential. It is likely that, in any event, she would receive a copy from the GMC at some stage of the proceedings.

I should be very grateful for your views on our proposals. I have written similarly to Detective Superintendent Steve Watts to ask if the police would have any problems with this

circulation. You may wish to take the opportunity of letting the police know that you have now passed your report to the Department.

We have not yet received a request for a copy of the report from Ann Alexander, and I know that you have an outstanding invitation from her to discuss your conclusions. Should we be asked, I am minded at this stage [to provide her with a copy on condition that it remains confidential to her][not to provide her with a copy]. I should also be grateful for your views about this. In the meantime you may wish to let her know that you have concluded your review and have passed your report to the Department. You may also wish to consider putting off the proposed meeting with her in view of our concerns about potential prejudice.

CMO

Annex B2

DRAFT

In confidence

Steve Watts Esq
Detective Chief Superintendent
Hampshire Constabulary
Police Headquarters
West Hill
WINCHESTER
Hampshire SO22 5DB

As you may know, I have recently received the report prepared by Professor Richard Baker into a number of deaths at Gosport War Memorial Hospital.

We have decided [that it would not be appropriate at this time to make a decision as to whether or not to publish the report][not to publish the report]. However, I understand from Professor Baker that the police have asked for a copy of the report.

In principle I have no objections to letting you have a copy of the report. My only concern is that it should remain confidential in the light of our decision, based on legal advice, [to postpone a decision on publication][not to publish the report]. I should therefore be very grateful to receive your assurance about this, subject of course to the needs of your criminal investigations.

We are also minded to provide copies, in confidence, to the GMC in view of the outstanding complaint against Dr Barton; and to Dr Simon Tanner who is responsible at the Health Authority for drawing together the strands of the investigations and for ensuring continuing patient safety in the locality. I also believe that Dr Jane Barton should receive a copy of the report, again in confidence, so that she is aware of its findings and conclusions.

We have not yet received a request for a copy of the report from Ann Alexander who is advising the patient group involved but, should we be asked, I am minded [to provide her with a copy on condition that it remains confidential to her][not to provide her with a copy].

I should be very grateful for your views about copying the report in this way, in particular if this is likely to be prejudicial in any way to your investigations. I am writing in similar terms to Professor Richard Baker.

CMO