



24 November 1998

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Your Reference: GG.2050

1ST SUBMISSION

Dear Sir

Re: Dr Barton, Gosport War Memorial Hospital and Gladys Richards, deceased

OIC: Code A

I return this advice file noting that advice is requested regarding the possibility of proceedings against Dr Barton for manslaughter in respect of the death of Mrs Richards. The expression "unlawful killing" can have no other meaning in the context of this case.

The complaint as interpreted by DC Maddison is that Dr Barton neglected to ensure that Mrs Richards was fed by intravenous drip, thereby depriving her of nourishment and liquid, which caused her to die of kidney failure due to such lack of nourishment.

A person, especially a doctor, may become liable for manslaughter by neglect of a positive duty to the patient. It is necessary to establish to the required standard that the Doctor was in breach of his duty of care to the patient, that this breach caused the death, and that it amounted to gross negligence. In the most recent cases the expression "recklessness" is used. To paraphrase a recent legal authority, indifference to an obvious risk of death and appreciation of such risk, coupled with a determination nevertheless to run that risk, are examples of recklessness. What the prosecution have to prove is a breach of duty in circumstances where the jury feel convinced that the Doctor's conduct can properly be described as reckless, that is to say, a reckless disregard of danger to the health and welfare of the patient. The Doctor must be proved to have been indifferent to an obvious risk of injury to the patient's health, or actually to have foreseen the risk but to have been determined nevertheless to run it.

The contents of this notice (advice) should not be copied to third parties but may be used as a basis for any explanation provided to witnesses by police.

Clearly properly qualified medical evidence is needed to prove manslaughter in these circumstances, and none exists at present. I note the cause of death is given as pneumonia on the certificate and that Mrs Richard's body has been cremated.

It is not clear from the file whether Dr Barton had care of the patient, since she is mentioned in connection with Mrs Lock's notes of 13th, 17th and 18th August, but not thereafter. However, if it is correct that the patient was left from 19th to 21st August with no nourishment at all, and died on 21st August, there may well be grounds for suggesting that Mrs Richards died as a result of recklessness as to her welfare on the part of the Doctor. It is clear that the patient was weak and helpless, and to a layman like myself, it appears prima facie that a severe deterioration of her health, possibly leading to her death, would result from neglect to provide her with nourishment and fluid.

In the absence of medical knowledge and any proper medical evidence, I find one aspect of this file very confusing. It seems to me that there was a deliberate decision on 18th August not to insert a syringe-driver into the haematoma because this is the way to administer an anaesthetic, and it seems to me that this has been equated with the use of a drip to administer intravenous nourishment to keep the patient alive. I am not sure they are the same thing at all.

I do not find the statement of Ruth Davies helpful, and I am puzzled that the complainants sat with Mrs Richards wasting away before their eyes between 19th and 21st August without protest that she was not being drip-fed, if that was necessary to her well-being.

Quite clearly on the basis of this file there is no evidence giving a realistic prospect of conviction for manslaughter or any other offence. However, I would suggest that there is an apparent difference between the omission to use a syringe-driver on 18th August, and the omission to drip-feed the patient between 19th August and her death on 21st August, and it is the latter which, if investigated and backed up with medical evidence, could suggest such recklessness and neglect as to enable me to consider further the possibility of proceeding against Dr Barton (or another or others of the Hospital staff) for manslaughter.

Yours faithfully

Code A

Robert C Wheeler
PROSECUTION TEAM LEADER