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30 July 2004

Paul

**OPERATION ROCHESTER – GOSPORT WAR MEMORIAL HOSPITAL
 Guidance to expert witnesses and Disclosure to GMC**

1. Attached please find a letter from the Hampshire police, which addresses these two topics.
2. Regarding the guidance on law etc to the experts I also attach two notes which I have prepared, relying heavily in part on Steve O'Doherty's training material for deaths in custody, which I would propose we send to Hampshire to incorporate into their guidance.
3. I would welcome your comments on these.
4. As to the second topic, that of disclosure to the GMC, my initial reaction is that the suggested disclosure limited to the category two material would be unobjectionable. However, I am concerned that it could lead to what is described as a high profile discipline hearing which would I assume probably precede and potential criminal trial. That would indeed be potentially prejudicial.
5. I do not know if disclosure could be on condition of no publicity or failing that an undertaking that there would be no disciplinary hearing until after a decision not to prosecute or the conclusion of the criminal proceedings whichever is the later.
6. Again I would welcome your views.

Code A

**R Drybrough-Smith
 Head London Division II**

*RDS.
 Sorry for slippage.
 of course I agree with the
 law notes (2 as sent)! I enc your
 old working file with DP's advice
 in case law in it may assist.
 As to (4) & (5) I do not know the
 answer - can we discuss? I think I
 would discuss with Paul 11/8.*



HAMPSHIRE CONSTABULARY

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Code A

27th July 2004

Mr R Dryborough Smith
Crown Prosecution Service
50 Ludgate Hill
London
EC4m 7EX

Dear Mr Dryborough SMITH

Re: OPERATION ROCHESTER - Investigation into deaths at the Gosport War Memorial Hospital.

Following our meeting of the 6th July 2004, as discussed please find enclosed 2 documents.

The first relates to the issue of disclosure of material to the General Medical Council in respect of the Investigation for the purposes of an Interim Orders Committee Hearing.

The document details a chronology of events and representations made to date by the GMC.

During a meeting between myself and Detective Chief Superintendent Watts on 23rd July 2004, it was decided that unless there was a clear risk of compromising the ongoing criminal investigation, or the fairness of any possible criminal proceedings against hospital employees, then the preferred position of the Hampshire Constabulary would be to disclose medical notes, and associated police reports in respect of the 60 or so cases that have been assessed into the sub optimal category. These documents would ordinarily fall within the unused material.

Continued/.....

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The effect of disclosure of this material would be to allow the GMC to further their investigation, and produce new prima facie evidence to the IOC in respect of sub optimal care, possibly enabling the GMC to make an order affecting the registration of Dr Barton.

In addition it would be our preferred option to give the GMC access to the clinical team of five experts that have screened these cases. They have not made witness statements in respect of the criminal prosecution, and are not expected to give evidence as prosecution witness. Two fresh experts have been commissioned to produce evidential statements in respect of the 9 negligent cases being further investigated.

Secondly, please find enclosed a copy of a guidance to 'medical experts document' prepared for the attention of the commissioned experts.

During our meeting of the 6th July, Detective Chief Supt. Watts commented that he would wish the Crown Prosecution Service to actively be involved in the briefing of the expert witnesses in terms of the legal issues around Homicide. It was agreed that the Police would produce a briefing note to the experts. Your observations in respect of the accuracy of its content would be appreciated.

Finally, may I confirm the proposed timescales for this investigation.

Four cases have been selected for fast tracking to the CPS, I confirm that these are being progressed expeditiously and the case papers should be with you by early October 2003.

Yours sincerely

Code A

David Williams
Detective Superintendent
Operation Rochester