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A continuing risk to patients, yet Gosport doctor allowed to practise

Outraged families will ask the High Court to rule on the General Medical Council's refusal to strike off Dr Jane Barton

By Nina Lakhani | Sunday 23 October 2011 | 0 comments



The General Medical Council's decision to allow a doctor found guilty of serious professional misconduct to continue to practise is likely to be challenged. A health watchdog, prompted by anger among the relatives of 12 of the doctor's patients who died while under her care in the infamous Gosport War Memorial Hospital case, is now expected to take the matter to the High Court.

The saga of Dr Jane Barton, found guilty of multiple counts of misconduct last week, has outraged relatives, MPs, lawyers and patients groups alike. Several medical experts described the decision not to strike her off as "illogical and inconsistent".

The Council for Healthcare Regulatory Excellence is examining transcripts from the hearing, which began last June. The GMC's imposition of 11 sanctions on Dr Barton did little to curb the widespread concern.

The GMC's five-person panel said: "There have been instances when Dr Barton's acts and omissions have put patients at increased risk of premature death... the panel was unable to accept that she no longer posed any risk to patients." However, the panel decided that she had proven her safety in the past 10 years during which she continued working as a GP while several police investigations, an inquest and NHS report were carried out.

Relatives of the deceased were particularly angry at the credence given to the 187 testimonials gathered from some of her patients and colleagues, which led the panel to conclude that "preserving Dr Barton's services as a GP is in the public interest".

She prescribed high doses of powerful drugs delivered through an intra-muscular syringe driver without properly assessing or investigating the patients. The panel concluded that she showed a "worrying lack of insight". Dr Barton worked as a part-time clinical assistant at the community hospital between 1989 and 2000.

Few of the 92 families who complained to Hampshire Police and triggered a massive investigation were permitted to give an opinion at the hearing. These families pointed out that the Shipman inquiry, into the deaths of elderly patients at the hands of their GP Harold Shipman, found that he too had been popular with his victims and their families.

Many of the 108 recommendations made in 2005 by Lady Janet Smith to tighten the system to prevent other murders have still to be fully implemented. A senior medical legal source admitted last night it is "universally accepted" that the current system of death certification and regulation "is a mess" and would not prevent another Shipman.

Ten years after the conviction of Shipman, the eminent toxicologist involved in his prosecution warns that a similarly murderous doctor could still escape detection for years.

Robert Forrest, professor of forensic chemistry at Sheffield University and one of Britain's foremost experts on murders committed by healthcare professionals, has told The Independent on Sunday that a "Dr Shipman who is careful and who used drugs not readily available could probably still get away with it for a considerable length of time."

He added: "Dr Barton and others who have sailed close to the harsh wind of the law of homicide no doubt have had in mind the

rule of dual-effect that gives a doctor an exemption from the general law of murder. This, in effect, gives a practitioner the option to prescribe what they know to be life-shortening doses of pain and anxiety-relieving medicines if their primary intention is not to shorten life, even if they know that is likely. To deliberately prescribe such doses with the intention of ending life is, of course, murder, provided the CPS prosecutes and a jury convicts.

"The cases of [nurse] Beverley Allitt and Harold Shipman have removed any vestiges of disbelief investigators may have had that doctors and nurses can deliberately kill patients in large numbers and get away with it for, sometimes, many years."

The IoS has learnt that the Nursing Midwifery Council is likely to face an unprecedented second investigation in the space of two years amid allegations of failing properly to investigate the nurses who worked with Dr Barton. The new chief executive last night promised to start investigations immediately, but it is some 19 years after the whistle was first blown by night nurses about what they claimed was unnecessary prescription of morphine to elderly patients.

The Gosport case has rung alarm bells about substandard or even negligent care given to elderly patients and the difficulties relatives face when trying find out how things went wrong.

Katherine Murphy from the Patients' Association said many relatives were frightened to leave loved ones alone in hospital in case they were neglected, maltreated or overmedicated.

Peter Walsh, the chief executive of the patient safety charity AvMA, said: "This scandal is another systematic example of older people's care and safety being severely compromised. Frankly, when there is an adverse outcome or death of an older person, there is a tendency for the health service to simply assume that it is natural causes, it could not be avoided, or decide it isn't worth investigating because they did not have long to go anyway.

"Access to justice in these cases is so difficult to achieve. This means that we only get to hear about a fraction of the cases where older people have suffered or even died prematurely as result of sub-standard care or errors."

Norman Lamb, the Liberal Democrat health spokesman, who last week tabled an Early Day Motion calling for an independent public inquiry into the Gosport deaths, said last night: "The failure of the system to deal with the Dr Barton case speedily has helped her to convince the panel she is safe to practise and should stay on; it beggars belief that she has been permitted to do so. There is real concern about the inconsistency of decisions made at these hearings, which completely undermines faith in the system's ability to protect patients."

The Labour MP Jeremy Corbyn, who signed the motion, said: "Part of the reason we are calling for a public inquiry is that it would send out a message to all health workers and services that NHS patients should get the best possible care regardless of age."

The Tory MP for Gosport, Peter Viggers, has repeatedly rejected calls for a public inquiry.

Missed opportunities

In December 1991, a Royal College of Nursing union representative wrote to a senior colleague on behalf of night nurses at Gosport hospital complaining about the overuse of strong painkillers:

"I am seeking your advice on how best to resolve a problem which was brought to my attention in April 1991 but apparently has been present for the last two years.

"I was contacted by a staff nurse [Sylvia Griffin] who is... employed on night duty in Redclyffe Annexe. Her concern was that patients within Redclyffe were being prescribed diamorphine who she felt did not always require it, the outcome being that the patient died. The drug was always being

administered via 'syringe drivers'. It is fair to say that this member of staff was speaking on behalf of a group of her colleagues."

In 1999 Hampshire Police asked Professor Brian Livesley, an expert on medical care for the elderly, to look into the death of 91-year-old Gladys Richards in 1998. He concluded:

"Doctor Jane Barton prescribed the drugs diamorphine, haloperidol, midazolam and hyoscine for Mrs Gladys Richards in a manner as to cause her death.

"Mr Phillip James Beed, Ms Margaret Couchman and Ms Christine Joice were also knowingly responsible for the administration of these drugs.

"As a result of being given these drugs, Mrs Richards was unlawfully killed."

A meeting took place between senior police officers, the CPS, Treasury Counsel and Professor Livesley. During that meeting, Treasury Counsel came to the view that his assertions were "flawed in respect of his analysis of the law".

In August 2001 the CPS advised that there was insufficient evidence for a successful prosecution.

From first suspicions to a verdict

1991 Night shift nurses raise concerns with the Royal College of Nursing about numbers of elderly patients given diamorphine at Gosport. The matter is dealt with internally at the Hampshire hospital.

August 1998 Gillian Mackenzie reports the death of her mother, Gladys Richards, to Hampshire Police, which launches an investigation. Two complaints are upheld by the Police Complaints Commission. No charges are brought.

1999 Another police investigation is launched into five deaths. Dr Jane Barton is interviewed. No charges.

April 2000 Dr Barton leaves the hospital, but continues as a GP. She agrees to stop prescribing opiates such as morphine. She says she raised concerns about her high workload.

July 2002 The Commission for Health Inspection finds systemic failings in the monitoring and prescribing of medication for elderly patients at Gosport. The NHS Trust doesn't issue an action plan until November.

September 2002 The chief medical officer orders an independent audit into the deaths. This report has never been made public. A nurse reveals complaints dating back to 1991. Police begin an investigation into 92 deaths at the hospital.

October 2007 Crown Prosecution Service concludes there is insufficient evidence to prosecute any health professionals. Police reports are passed to the Portsmouth coroner, David Horsley, in early 2008. His call for a public inquiry is dismissed by the Government.

March 2009 Inquests into 10 deaths begin. A jury decides that in the cases of Robert Wilson, 74, Geoffrey Packman, 66, and Elsa Devine, 88, the use of painkillers had been inappropriate for their conditions. In two other cases, Arthur Cunningham, 79, and Elsie Lavender, 83, the medication doses contributed to their deaths.

July 2009 GMC fitness-to-practise hearing begins eight years after Dr Barton was first referred. She tells the panel: "I was aiming to ensure the maximum comfort and dignity for my patients."

January 2010 Dr Barton is found guilty of multiple instances of serious professional misconduct but allowed to continue working under certain conditions. She says she is disappointed with the verdict. The Nursing & Midwifery Council promises to start

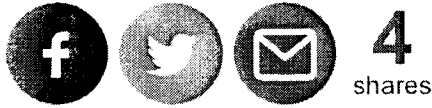
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investigations into nurses working alongside Dr Barton.

Richard Osley

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