



Operation ROCHESTER.

File note.

Outcome of meeting with Counsel David PERRY.

1500-1700hrs Wednesday 28th September 2005.

The Operation ROCHESTER management team met with Counsel and CPS representatives to discuss issues arising from case papers delivered to date, those being:-

Full case files in respect of patients:-

Elsie DEVINE

Elsie LAVENDER

Code A

Generic case-file of supporting statements of Healthcare professionals including the BAKER report.

Medical records in respect of all Category 3B cases.

Counsel was informed that case-files in respect of patients:-

Robert WILSON, Arthur CUNNINGHAM and Ruby LAKE were essentially complete and would shortly be forwarded to the CPS.

Investigation was ongoing in respect of the cases of SERVICE, GREGORY, SPURGIN and PACKMAN.

Dr BARTON has been interviewed in respect of seven cases, initial interviews due for completion in November 2005.

Counsel was reminded of the heavyweight comments of Professor BAKER, the Commission for Health Improvement findings, the evidence of professor's FORD and MUNDY in respect of the original 5 cases reviewed including category 3's CUNNINGHAM and WILSON, and healthcare staff concerns contained within the generic case-file submitted to CPS in August 2005.

The current position in respect of the General Medical Council and the Nursing and Midwifery Council was discussed, most category 1 and 2 case-files having now been released from police investigation, in particular the case of Gladys RICHARDS (previously considered by CPS for prosecution).

Counsel remarked that the current approach to the investigation was in his view correct, given the complexity of the cases, and reminded of Dr BLACKS comments that the cases presented as examples of the most complex and challenging problems in Geriatric medicine.

Counsel added that in his view the investigation had been impressively painstaking but necessarily so.

In respect of the cases of DEVINE , Code A and LAVENDER, Counsel felt that the threshold of gross negligence manslaughter had not been met given the evidence of Dr BLACK that the patients were in terminal phase, and that causation could not be established to the required standard.

Whilst Dr WILCOCK expressed greater concerns he did not express them strongly enough, there was significant evidence particularly in the case of DEVINE that she was in the terminal phase of kidney failure, and this view could not be discounted by any of the experts.

With patients in terminal phase diamorphine administration may be appropriate palliation.

I would still like to speak with the experts and review their current reports as to "terminal phase " issues

Probably me just splitting hairs but as the rest of the team will read this I would rather they didn't go off at a tangent

Similarly in the cases of Code A and LAVENDER, experts could not discount terminal phase of death, therefore proving gross negligence and causation was a problem.

The reporting of Professor BAKER and the CHI in addition to the police investigation provided a formidable case for the GMC and possibly a Health and Safety prosecution, although the value of an HSE prosecution would be debatable.

Counsel suggested that the evidence of Dr BLACK effectively countered the concerns raised by Dr WILCOCK around the issue of causation and criminal gross negligence.

Following discussion Counsel agreed that themes in terms of negligent treatment could be considered but only upon the basis that at least two of the cases referred met the criteria for prosecution. This could be regarded as relevant background evidence not similar fact evidence.

Counsel did not dissent from Mr DRYBOROUGH-SMTHS advice to experts, particularly around the issue of operative cause of death and the position that in the cases of multi-factorial death causation may be proved if one of the operative causes was due to a more than minimal act or omission. He pointed out however that juries ultimately may side with a GP administering for palliation.

Counsel commented that on the basis of what he had seen to date his view was that there were real difficulties getting the case off of the ground, defence would successfully apply for a dismissal of any prosecution. Counsel would be duty bound to run Dr BLACK as a witness this representing an expert Trojan horse scenario.

However this position would be reviewed in the light of all of the evidence.

Corporate liability was academic at this stage, but in such an event counsel anticipated the usual difficulties proving cause of death and controlling mind, identifying individual(s) taking on the persona of the company.

In terms of any Health and Safety prosecution CPS Mr CLOSE commented that it was not usual policy to prosecute unless there was an accompanying homicide charge.

DW Det Supt 7227.