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Title GUIDANCE FOR MEDICAL EXPERTS DOCUMENT & COVERING EMAIL

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## OPERATION ROCHESTER

### Guidance for Medical Experts

#### Overview.

Operation ROCHESTER is an investigation by Hampshire Police into the circumstances surrounding the deaths of elderly patients at Gosport War Memorial Hospital.

Nine such cases are subject to ongoing investigation. The brief to medical experts in this respect is to examine the medical records and to comment upon the standard of care afforded to those patients in the days leading up to their death against the acceptable standards of the day. Where appropriate, if the care is found to be sub optimal comment upon the extent to which it may or may not disclose criminally culpable actions on the part of individuals or groups.

It may be the case that the experts determine that the standard of care afforded was acceptable.

Conversely it may be determined that the standard of care delivered to those patients was either sub optimal, negligent or intended to hasten or end life.

Whatever the view of the experts, their statements of evidence/reports should be constructed with the following principles in mind:-

- 1) What treatment should be proffered in each individual case? Experts should cover in their report the basic conditions of a particular disease and how the symptoms present themselves. They can then go on to describe how the condition would *normally* be treated in their own experience, referencing to recognised protocols of the day.
- 2) When creating reports the experts must bear in mind 'plain speak'. Whilst it is important to be professionally correct, opinions are likely to be challenged by defence experts. Equally reports should be set out in a way that allows for the police/counsel etc to dissect the report and ask for further work or clarification.
- 3) Experts should have an understanding of the terms Criminal Gross Negligence, and Unlawful Act within the context of Homicide. Language used to describe negligence should be consistent, and if appropriate able to

demonstrate why one act is more negligent than another and the level of negligence.

- 4) Experts need to be clear from the outset that the language to be used in these cases will apply to the criminal standard of proof 'sure beyond all reasonable doubt' 'causative' etc, not 'balance of probabilities.'
- 5) Consideration must be given to explaining the use of statistical information in reports and what the statistics are seeking to establish.
- 6) Referenced documentation supporting any report must be included.
- 7) Analysis of supplementary paperwork such as prescription charts/fluid charts/observation charts needs to be undertaken. Paperwork differs from ward to ward let alone hospital to hospital. Ensure that if experts are commenting on procedures that have been carried out and are critical that they have already documented what procedures should have been in place and carried out in *their* experience. They cannot assume that the practices they follow are the same as the ones used by the staff at this hospital. They must spell things out.
- 8) Expert will be supplied with copies of relevant hospital protocols / procedures.

In order to assist experts with an understanding of the law the following passages may be relevant during their determinations.

### **MANSLAUGHTER BY UNLAWFUL ACT.**

The following statements in respect of manslaughter resulting from an unlawful act are established:-

- a. Death must be the result of an unlawful act, not omission.
- b. The unlawful act must be one which all sober and reasonable people would inevitably realise must subject the victim to at least the risk of some harm resulting there-from even though it may not be serious harm.
- c. It is immaterial whether or not the accused knew that the act was unlawful and dangerous and whether or not harm was intended.
- d. Harm means physical harm.

The House of Lords have approved the following for the meaning of unlawful act.

"Where the act which a person is engaged in performing is unlawful, then if at the same time it is a dangerous act, that is, an act which is likely to injure another person, and quite inadvertently the doer of the act causes the death of that other person by that act, then he is guilty of manslaughter."

### **MANSLAUGHTER BY GROSS NEGLIGENCE**

The court in the case of R v Adomako (1993) created the following test for such manslaughter:

- (a) Was there, in the circumstances, a duty of care owed by the defendant to the deceased (assuming the Judge has ruled that on the facts such a duty was capable of arising)?
- (b) Was there a breach of that duty?
- (c) Did that breach cause the death of the deceased or was there a foreseeable risk of death by reason of it (R v Singh, 19/2/99)?
- (d) Should the breach of duty be characterised as gross negligence and therefore characterised as a criminal act?

This ruling has become the standard test for such cases and it is important therefore that it is taken into account when reports are compiled.

This criminal offence can be complicated to prove. In medical based enquiries clinical experts can assist the authorities in assessing whether an offence has been committed by addressing certain key areas in their reports. The most important area for a clinician to comment upon is causation. With this point in mind consideration needs to be given as follows:-

For causation to be proved, the unlawful actions of the potential defendant need not be the only cause of death, nor the main cause provided they amount to a more than minimal cause of, or contribution to death. '

For any homicide, the burden is on the Crown to prove beyond reasonable doubt that the act (or omission) 'caused death in the sense that it more than minimally, negligibly or trivially contributed to the death' (the 'de minimis' rule). Unless the crown can establish that the act or omission was a cause of or a substantial contribution to the death, an essential link in the chain of causation is not established.

### **Murder.**

Murder is defined at common law as 'where a person of sound mind and discretion unlawfully kills any reasonable creature in being with intent to kill or cause grievous bodily harm.'

Unlawfully means without legal justification or excuse.

Lawful conduct would be bona fide surgical or medical treatment.

The defendant's Act must be the substantial cause of death. Must not be so insignificant as to be dismissed by the court on the de minimus principle.

27<sup>th</sup> July 2004.

**Code A**

**From:** Williams, David (DCI)  
**Sent:** 27 July 2004 09:54  
**To:** **Code A**  
**Cc:**  
**Subject:** FW: OPERATION ROCHESTER



Guide for  
Experts.doc (52 KB)

Following my meeting with SW this is what he want to be used to brief the experts and nothing else...  
 If they have received anything else by way a briefing note can you recall and refer the experts to this document.  
 Thanks.DW.

-----Original Message-----  
**From:** Williams, David (DCI)  
**Sent:** 27 July 2004 09:34  
**To:** Williams, David (DCI)  
**Subject:** FW: OPERATION ROCHESTER

-----Original Message-----  
**From:** Williams, David (DCI)  
**Sent:** 19 July 2004 16:00  
**To:** **Code A**  
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**Subject:** FW: OPERATION ROCHESTER

**Code A**

This is what SW wants.. Any observations..DW.

-----Original Message-----  
**From:** Williams, David (DCI)  
**Sent:** 19 July 2004 14:01  
**To:** Williams, David (DCI)  
**Subject:** OPERATION ROCHESTER

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