Patient safety and the law of gross negligence

Wednesday 4 October 2017
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The recent highly publicised gross negligence manslaughter (GNM) prosecutions of healthcare workers has led to rising concerns about the impact on patient safety. There is evidence that it is eroding morale and resulting in the practice of defensive medicine, which will inevitably result in increased healthcare costs. There is also a developing reluctance of clinicians to disclose their mistakes, for fear of criminal sanction, which deprives the profession and the institutions involved the opportunity to learn from these unintentional mishaps.

The aim of this meeting is to foster greater understanding of the challenges faced by all the relevant professions, including the difficulties faced by doctors when, for example, faced with a rapidly deteriorating patient. Difficult decisions have to be made rapidly, often with inadequate information, and these in retrospect may sometimes be construed as incorrect, negligent, or even grossly negligent, and to have contributed to the patient’s demise. The variable quality of the medical “experts” who are asked to make judgements on such matters is also an issue that needs to be addressed.

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<tr>
<td>9.30 am</td>
<td>Registration, tea and coffee</td>
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<tr>
<td>10.00 am</td>
<td>Welcome address&lt;br&gt;Professor Roger Kirby, Chairman, Academic Board, Royal Society of Medicine</td>
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<tr>
<td>10.05 am</td>
<td><strong>SESSION ONE</strong></td>
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<tr>
<td>10.05 am</td>
<td>Does clinical practice change under threat of criminal prosecution?&lt;br&gt;Dr Jenny Vaughan, Consultant Neurologist, Imperial College Healthcare NHS Trust</td>
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<td>10.20 am</td>
<td>The medical “expert” - the good, the bad and the ugly&lt;br&gt;Dr Peter McDonald, Consultant Surgeon, Northwick Park and St Mark’s Hospitals, Senior Clinical Lecturer, Imperial College, London and Non-Executive Director, Medical and Dental Defence Union of Scotland</td>
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<tr>
<td>10.35 am</td>
<td>The problem with GNM investigations and prosecutions from the medical standpoint&lt;br&gt;Mr Ian Barker, Senior Solicitor, Medical Defence Union</td>
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<td>10.50 am</td>
<td>What happens when a doctor is referred to the GMC: Is the safety of the public or confidence in the profession at risk?&lt;br&gt;Professor Sir Terence Stephenson, Chair, General Medical Council and Nuffield Professor of Child Health, Institute of Child Health, University College London and&lt;br&gt;Ms Anna Rowland, Assistant Director, Policy, Business Transformation and Safeguarding, Fitness to Practice, General Medical Council</td>
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<tr>
<td>11.05 am</td>
<td>Questions and answers</td>
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<tr>
<td>11.20 am</td>
<td>Tea and coffee break</td>
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<tr>
<td>11.40 am</td>
<td><strong>SESSION TWO</strong></td>
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<td>11.40 am</td>
<td>A coroner’s perspective – lessons from coronial investigations&lt;br&gt;Ms Karen Harrold, Assistant Coroner and Head of the Appeals and Review Unit, Crown Prosecution Service</td>
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<td>12.00 pm</td>
<td>Recent developments in the law on gross negligence&lt;br&gt;Ms Zoe Johnson QC, Queens Counsel, QEB Hollis Whiteman&lt;br&gt;Mr Philip Stott, Barrister, QEB Hollis Whiteman</td>
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<th>Time</th>
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<tr>
<td>12.25 pm</td>
<td>Prosecuting gross negligence manslaughter</td>
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<td>Mr Simon Ringrose, Unit Head, Special Crime Division, Crown Prosecution Service</td>
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<tr>
<td>12.45 pm</td>
<td>Questions and answers</td>
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<tr>
<td>1.00 pm</td>
<td>Lunch</td>
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**SESSION THREE: Round table discussions on one of the following key questions**

1. Would there be value in all cases referred by coroners to the police to be considered first by the Chief Coroner, to help guide the need for any such referral?

2. Is there a case for seeking further specific updated guidance to coroners from the Chief Coroner about the threshold/test for gross negligence manslaughter, particularly in the light of the decisions in the cases of Sellu and Rose?

3. What level of experience/expertise should be expected of those investigating these allegations?

4. Is there a case for sharing investigation experience, best practice, and resources at a regional and/or national level?

5. If speed of decision-making is of value, might that be assisted by a requirement for there to be liaison between the police and the CPS at the outset?

6. What can we do to ensure we get the highest quality expert evidence?

7. To what extent should deficiencies in systems play a part in the evaluation and consideration of GNM cases?

8. What effect will recent judgments (including Sellu and Honey Rose) have on the law of gross negligence?

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<tr>
<td>1.45 pm</td>
<td>Breakout discussion 1</td>
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<td>2.15 pm</td>
<td>Breakout discussion 2</td>
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<tr>
<td>2.45 pm</td>
<td>Breakout discussion 3</td>
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<tr>
<td>3.15 pm</td>
<td>Feedback from breakout discussions and plenary session</td>
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<td>3.50 pm</td>
<td>Next steps and closing remarks</td>
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<td>Professor Roger Kirby, Chairman, Academic Board, Royal Society of Medicine</td>
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<td>4.00 pm</td>
<td>Close of meeting</td>
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<td>Evaluation surveys and certificates of attendance will be sent by email</td>
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The RSM itself accepts no legal responsibility for the facts stated or opinions expressed during this meeting. It is the responsibility of any attendees to satisfy him/herself as to which part(s) of those facts/opinions should be relied on in any way whatsoever.
Welcome address
Professor Roger Kirby, Chairman, Academic Board, Royal Society of Medicine

With an international reputation as a clinician, researcher, communicator and innovator, Roger Kirby specialises in prostate cancer and benign prostatic disease (BPH). He was among the first in the UK to introduce medical therapy for BPH, radical surgery for prostate cancer and minimally invasive treatments using lasers and robotics. He has performed over 3,500 radical prostatectomy operations, pioneering the robot-assisted technique in 2005.

He was awarded the St Peter’s Medal by the British Association of Urological Surgeons in 2006 and the Clement Price Thomas Award for Services to Surgery by the Royal College of Surgeons in 2016. He is a trustee of the Royal Society of Medicine and is currently president of its Urology Section for 2016-17. Professor Kirby has written 68 books and published more than 350 peer-reviewed papers. He has founded and edited two journals: Prostate Cancer and Prostatic Diseases and Trends in Urology and Men’s Health.

Having had a career-long interest in the wider issues of men’s health and patient safety, in 2005 he created The Prostate Centre, a private men’s health clinic in London. It has a firmly established reputation for excellence through clinical governance, protocols, patient information, safety and support, good service and multidisciplinary team working.

Professor Kirby was chairman of the charity Prostate UK until 2010, and continues as a trustee of Prostate Cancer UK. He was a founding member and is now president of The Urology Foundation. For these charities and others he has personally raised over £4 million through marathon running, mountain climbing, trekking and cycling challenges.

Does clinical practice change under threat of criminal prosecution?
Dr Jenny Vaughan, Consultant Neurologist, Imperial College Healthcare NHS Trust

Biography

The profession currently faces unprecedented challenges, not least the conflict between the rising involvement of the criminal law in the investigation of medical errors and the need for us to respect the duty of candour. Dr Jenny Vaughan recently spearheaded a campaign to successfully overturn the manslaughter conviction of a surgeon who was solely blamed for the death of a patient in a private hospital and sent to prison. With others, this involved fundraising, writing key articles, co-founding a website and co-ordinating several legal teams. She initiated a landmark meeting at the Academy of Medical Royal Colleges, which brought together HM Coroner’s Office, the GMC and specialist lawyers in the field. She has personally surveyed thousands of doctors via Doctors.net.

Some of the worst pressures facing doctors centre around medical error. Dr Vaughan remains particularly concerned that a recent analysis of conviction trend show an excessive conviction rate of BEM doctors. The reasons for this are likely to be complex but must be studied further to understand why it appears to be happening.

Bringing together all interested organisations will allow the development of a safe and just culture for patients and healthcare workers alike.

Abstract

Most healthcare professionals accept deaths and complications are best discussed in a transparent, no-blame environment. This allows lessons to be learned and future care to be improved in much the same way that pilots analyse aviation incidents. The results of this
survey, of over 1600 doctors (survey enabled by doctors.net with membership of over 200,000 doctors) shows that the threat of criminal sanctions leads to the practice of defensive medicine. This means that healthcare professionals are routinely ordering more investigations than necessary for patients and that the patient may be exposed to even harmful procedures they don’t need. The survey also highlighted that most doctors feared a potential exodus of trainees from high-risk specialties leaving difficult to recruit areas, such as paediatrics, under more strain although it’s likely that the reasons for this are multifactorial. Defensive medicine provides no benefit and much harm as well as significantly increasing costs at a time when NHS budgets are under massive pressure.

**The medical “expert” - the good, the bad and the ugly**

Dr Peter McDonald, Consultant Surgeon, Northwick Park and St Mark’s Hospitals, Senior Clinical Lecturer, Imperial College, London and Non-Executive Director, MDDUS

**Biography**

Peter McDonald trained at the University College London and qualified in 1975 he trained in general surgery in London, Barnet, Oxford, Northampton, Winchester, Basingstoke and Cleveland, Ohio, St Mark’s Hospital and was a lecturer at the University of Southampton. He was appointed as a consultant surgeon in gastrointestinal disorders at Northwick Park Hospital in 1991 and at St Mark’s in 1993 but also performs paediatric general surgery.

He has contributed more than 70 scientific papers and several book chapters. He is a well-known medical journalist having published 1300 opinion columns, a novel ‘A Trust In Conflict’, ‘The Oxford Dictionary of Medical Quotations’, a travel book ‘A Ride in Middle England’ and has made many appearances on Radio 4 and elsewhere. His nom de plumes include Gemellus, Dr Slop, Mr Slop and Avicenna.

He has been clinical director in surgery, college tutor, chairman of the Medical Staff Committee at Northwick Park and St Mark’s, honorary editor of the Royal Society of Medicine, president of the Section of Surgery at the Royal Society of Medicine, president of the St Mark’s Association. He is currently chairman of the Northwest London Paediatric Surgery Network and is a non-executive director of the MDDUS Medical Defence Organisation.

He has published several articles on the subject of medical defence and medical litigation.

**Abstract**

In light of the recent quashing of the conviction of surgeon David Sellu for gross negligence manslaughter, Peter McDonald discusses the role of the expert medical witness and makes the case for some form of quality control or accreditation for this important role.

**What happens when a doctor is referred to the GMC: Is the safety of the public or confidence in the profession at risk?**

Professor Sir Terence Stephenson, Chair, General Medical Council and Nuffield Professor of Child Health, Institute of Child Health, University College London

**Biography**

Professor Stephenson was formerly chair of the Academy of Medical Royal Colleges for 2012-2014 and president of the Royal College of Paediatrics and Child Health 2009-2012.
He is also Nuffield Professor of Child Health at the Institute of Child Health, University College London and co-director of the Children’s Policy Research Unit.

He has been elected an honorary fellow of eleven colleges or academies, in the UK, Ireland, Hong Kong and Australia.

Professor Stephenson was formerly dean of the Medical School and professor of Child Health at the University of Nottingham, and a non-executive director of Nottingham University Hospitals NHS Trust.

He is an honorary consultant in paediatrics at UCL Hospital and Great Ormond Street Hospital London and has co-authored seven textbooks. His research has mainly been in physiology of early life and acute and chronic paediatric illness and he has published over 275 peer reviewed papers, editorials and chapters. As a researcher, he has received over £8 million in funding.

A coroner’s perspective – lessons from coronial investigations
Ms Karen Harrold, Assistant Coroner and Head of the Appeals and Review Unit, Crown Prosecution Service

Biography
Karen Harrold BA Hons (Law), MBA, Assistant Coroner. Karen qualified as a solicitor in private practice in Hampshire before joining the Crown Prosecution Service from its inception in 1986 and has worked in a number of CPS Areas handling the full range of criminal cases. As an experienced advocate with higher court rights, she also advised the Attorney General for 4 years on a wide range of criminal/civil law and policy issues including human rights, contempt and development of new legislation. Karen then took up a challenging post as chief crown prosecution in 2004 running a large team of lawyers, paralegals and admin staff responsible for all prosecutions in Wiltshire. In 2010, Karen was privileged to be seconded to work with the Hillsborough Independent Panel providing legal advice to panel members and then returned to CPS HQ to advise the director of public prosecutions on the most serious criminal cases and handle high interest projects. She is now head of the appeals and review unit providing a high quality specialist service for all CPS cases in the three most senior appellate courts in England and Wales - the Court of Appeal, the Administrative Court and the Supreme Court. She became an assistant coroner in Portsmouth in 2010 and more recently in Southampton, Winchester and West Sussex handling the full range of coronial cases including prison deaths and medical negligence inquests. Karen is the current judicial review and case law secretary for the Coroners’ Society of England and Wales since 2013.

Abstract
In this presentation, Karen will aim to cover the following:

- Role of a coroner including relationship with other coroners and details of role of Chief Coroner
- Coronial investigation process including pre inquest hearings and inquisitorial not accusatorial nature of inquest hearing itself
- Short form and narrative conclusions plus standards of proof
- Relationship between coroners and CPS
- Why coroners require evidence from consultants or instruct an independent expert and choice of the right medical expert
- Prevent Future Death Reports
- Brief example of how this all works in practice – Jack Adcock case
Recent developments in the law on gross negligence
Ms Zoe Johnson QC, Queens Counsel, QEB Hollis Whiteman and
Mr Philip Stott, Barrister, QEB Hollis Whiteman

Biographies

Zoe Johnson defends and prosecutes the most serious and high profile crime. Her eleven years as treasury counsel (the second woman ever to have been appointed senior treasury counsel) gave her vast experience in cases of homicide, terrorism and organised crime. For example she was instructed in the first ever case of terrorist fund raising [R v Oumerzouk] and advised in the case of Gary McKinnon, accused of hacking into NASA and the US department of defence. She has acted in a number of “honour killings” and hate crimes. Zoe secured the only successful prosecution of a journalist accused of misconduct in public office [R v France] and has advised in relation to the prosecution of News International. She has particular expertise in cases with medico-legal features. After appearing in 2005 in R v Harris and Others she is adept in allegations of “shaken baby syndrome” and has appeared in many such cases [most recently R v Sobcyzk]. Zoe is accomplished in presenting and dissecting psychiatric evidence and has been involved in a large number of contested diminished responsibility, insanity and fitness to plead cases. She is instructed in cases of extreme sensitivity, often involving the death of children [e.g R v Tania Clarence, a mother who suffocated her three disabled children and R v Dixie, the murder of Sally Ann Bowman]. She has a special interest in medical gross negligence manslaughter cases and recently secured the acquittal, at the close of the Crown’s case, of Dr Rudling, a GP accused of failing to recognise a life threatening illness.

Zoe successfully defended in the first ever prosecution under the Female Genital Mutilation legislation [R v Dharmasena] and as a result has been asked to advise several clients (individuals and religious groups) prior to a possible charge of FGM. For many years Zoe has defended and prosecuted in all areas of business crime such as bribery and corruption, insider dealing and accountancy fraud [R v Beard and others]. Her experience includes advising companies on sanctions, advising on the construction of legislation for the FCA and advising the SFO on various investigations [e.g the investigation into Hewlett Packard’s takeover of Autonomy]. Zoe was instructed as leading counsel in the second ever deferred Prosecution agreement [R v ABC] which set the bench mark for such agreements and was approved by the Court in June 2016. Zoe has appeared regularly over the years in various tribunals, in particular the GMC, GDC and HCPC. Earlier this year she successfully defended a registrar obstetrician accused of mismanagement of a twin delivery leading to death and dishonesty [GMC v Dr Mohan]. Last year she successfully defended a doctor accused of multiple sexual assaults. Zoe is instructed in the first proceedings ever brought by the British Psychological Society.

Philip Stott is an experienced advocate in the criminal courts, trusted by defence solicitors and prosecuting authorities alike in cases with high levels of sensitivity and complexity. His experience includes prosecuting and defending cases involving allegations of: homicide, including allegations of medical negligence or involving expert evidence; acquisitive crime, including crimes of high levels of violence, blackmail or sophisticated dishonesty; sexual offending, including rape and the abuse of children; large scale cases of money laundering and/or fraud; the supply of drugs, particularly over international borders; immigration offending, including misconduct by public officials or lawyers; motoring fatalities, and driving
offences. He also represents medical, legal and other professionals in proceedings before their regulator, including before the MPTS, GDC etc.

Recent work includes:

- **R v Butler and Gray** – Junior Counsel for the Crown in the trial of the murder of 6-year old Ellie Butler by her father, and associated charges of perverting the course of justice and child cruelty against her mother
- **R v Sanzone** – Junior Counsel for the Crown in trial of the murder of two-week old Joshua Millinson by his father
- **R v Rudling** - Junior Counsel (led by Zoe Johnson QC) representing a General Practitioner accused of the manslaughter by gross negligence of a 12-year old boy, and perverting the course of justice
- **R v Collins, Reader, Wood and others** – Junior Counsel for the prosecution in the burglary of Hatton Garden Safe Deposit Ltd, the largest burglary in English legal history

**Abstract**

Zoe Johnson QC and Philip Stott will provide an overview of the elements of the offence of gross negligence manslaughter, and how the courts have interpreted and refined those elements over recent years. They will discuss in particular the impact on the law of three recent cases concerning allegations of gross negligence manslaughter made against medical professionals, R v Honey Rose (an optometrist), R v Sellu (a colorectal consultant) and R v Rudling (a general practitioner). The decisions of the Court of Appeal in those cases will have long-term consequences in determining when it is right to prosecute medical professionals for manslaughter.

**Prosecuting gross negligence manslaughter**

Mr Simon Ringrose, Unit Head, Special Crime Division, Crown Prosecution Service

**Biography**

Simon qualified as a solicitor in 1992 and spent the first 8 years of his career in criminal defence as a solicitor and partner in a firm in Kent. In 2001 Simon joined the Government Legal Service as a lawyer in the prosecution division of Defra taking the lead in relation to sea fishing and veterinary medicines offences. Having been asked to research the definition of a ‘seed’ Simon decided that he was perhaps suited to less esoteric legal matters and joined the Crown Prosecution Service in 2002. Being one of the lawyers on the 2006 £53 million Tonbridge Robbery led to him joining the South East Complex Casework Unit in 2009. Here Simon developed an interest in dealing with high profile and complex cases involving homicide, organised crime and international issues. In 2013 Simon joined the Special Crime Division where he dealt with cases of police corruption, assisted suicide, election offences and corporate and gross negligence manslaughter. He was promoted to his current position of Unit Head in May 2017.

**Abstract**

In this talk, Simon aims to cover:

- What the CPS does
- The Full Code Test
- What the CPS doesn’t do
- How cases reach the CPS
• Who makes the decision?
• Staged approach to GNM
• Volume of cases and outcomes
• Expert evidence