

# STATES OF JERSEY



## VERITA INVESTIGATION: EXTENSION TO COVER EXCLUSION OF CONSULTANT OBSTETRICIAN AND GYNAECOLOGIST

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Lodged au Greffe on 18th August 2009  
by the Deputy of St. Martin

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STATES GREFFE

## PROPOSITION

**THE STATES are asked to decide whether they are of opinion –**

to request the Minister for Health and Social Services to instruct Verita to include in their current investigation an examination of the events relating to the exclusion of the Consultant Obstetrician and Gynaecologist in October 2006 and the conduct of the exclusion since that date, including –

- (a) investigating the reasons for the immediate exclusion of the Consultant Obstetrician and Gynaecologist and the Locum Consultant Obstetrician and Gynaecologist;
- (b) investigating, in the case of the Consultant Obstetrician and Gynaecologist –
  - (i) whether the Health and Social Services procedure in place at that time for dealing with capability and conduct of senior doctors was correctly followed;
  - (ii) whether the National Clinical Assessment Service (NCAS) was consulted immediately, or before, the exclusion was formalised;
  - (iii) whether NCAS has been consulted at any stage, and if so, whether advice subsequently given was correctly followed in the case of this Consultant;
  - (iv) what factors lead to the Consultant being excluded on full pay for almost 3 years, and whether any of these were avoidable;
- (c) investigating the role played by the various Ministers for Health and Social Services, the States Employment Board and the Senior Management Team of the Health and Social Services Department from the time of the exclusion to the present date;
- (d) investigating whether there have been any procedural errors, or conflicts of interest on the part of Senior Hospital Managers which have lead to this exclusion not being resolved to date; and
- (e) investigating the cost of the exclusion and the funding arrangements to cover the cost of the exclusion.

DEPUTY OF ST. MARTIN

## REPORT

On 17th October 2006 Mrs. Elizabeth Rourke died at the General Hospital after undergoing a routine minor gynaecological operation. The Locum Consultant who undertook the operation was immediately suspended and her contract was not renewed. Her actions were investigated by the States of Jersey Police. She was subsequently tried for manslaughter and acquitted on 27th January 2009.

A few days after the death of Mrs. Rourke, the Consultant Obstetrician and Gynaecologist in charge of Mrs. Rourke's case was also suspended. His actions were also investigated by the Police. No charges were brought against him. No attempt was made to reinstate him at this point. He was not called upon to give evidence at the trial of the Locum Consultant, either by the defence or prosecution, a surprising circumstance, which was questioned by the judge, Sir Richard Tucker.

To date almost 3 years have elapsed, but the employee is still suspended. Following questions at States Sittings it is known that the cost to the Health Service in covering the period of the employee's suspension is in the region of £500,000. Given that other persons have had to cover for the work not being undertaken by the suspended employee, the total cost is likely to be in the region of £1,000,000 and *is* still rising.

The amount of money spent on the suspension was described by the Minister for Health and Social Services during question time on 2nd June as scandalous, not only to the cost to the taxpayers, unfair to the employee but as well to the family of the patient that died. Unfortunately the Minister's sentiments have not developed into action.

As Members will know, I have devoted considerable time to devising a system whereby States employees who are suspended are treated in a fair and transparent manner. To this end I have conducted considerable research and asked numerous questions at States Sittings to ensure that suspended employees are not left in limbo. Suspensions are demoralising to the employees and fellow work colleagues, disruptive in the work-place and wasted expenditure for the taxpayer.

Together with other States Members, I have asked several questions regarding the suspension of the consultant, and it is apparent that many of the answers given were unsatisfactory and a grave injustice is being perpetuated because of the continuing suspension. It is also patently obvious that no-one is taking ownership of the matter.

Following the conclusion of the Royal Court trial on 27th January, the then Minister for Health and Social Services, Senator Perchard, published a statement expressing his sympathy to the deceased family and friends. The Chief Executive for Health stated that his Department would recommence its own internal investigation of the incident the following week, as the procedure was delayed, quite properly, until after the trial was complete. It would make public the key findings and recommendations of the investigation in due course. Unfortunately no mention was made as to what internal investigations had been carried out and by whom.

In a statement made by the Minister for Health and Social Services at the States Sitting on 3rd February, he said that an internal team of trained senior health and social care practitioners who were working in other parts of the department unrelated to surgical services would be formed. The team would work alongside one of the United Kingdom's experts in the field of investigation.

However, 2 weeks later on 19th February, the Minister announced that following advice he had commissioned Verita, an independent organisation, to undertake a thorough investigation of the incident. The Terms of Reference for the Verita investigation were developed after discussions with the Minister for Health and Social Services, the Health and Social Services legal advisor and the Medical Director and the Director of Nursing and Governance.

Leading Verita's investigation would be Dr. Sally Adams, an experienced human factors practitioner, who had a strong background in healthcare and incident investigation. The Terms of Reference were published and it was stipulated that Verita "Would review the main actions taken by the Health and Social Services Department in response to the death of Mrs. Elizabeth Rourke including its own interim internal investigation. This will include establishing whether or not there are any significant omissions to the investigation and, if so, exploring these."

On 26th March the Minister for Health and Social Services issued another press statement, which again included Verita's Terms of Reference, however it omitted the sentence: "This will include establishing whether or not there are any significant omissions to the investigation and, if so, exploring these."

Understandably the sentence's omission caused confusion, which led to more questions being asked at States Sittings from several Members who were determined to establish the truth. I also believe that the confusion undermined Verita and the credibility of the Minister for Health and Social Services and the Department.

This is evident because a month after the election of another Minister for Health and Social Services, Proposition P.76/2009 was lodged by a former Minister for Health and Social Services, Senator Syvret, who asked the States to agree that a Committee of Inquiry should be established and the proposed investigation by Verita should not proceed.

As I had serious doubts about Verita's credibility, impartiality and its Terms of Reference and confidence in the Minister's ability to ensure that all actions and the suspensions matters would be thoroughly investigated, I was minded to support P.76/2009.

However, I was persuaded to change my view for the following reasons: Verita had changed and strengthened its team with Dr. Adams and Mr. Mechen being replaced by a retired Consultant Gynaecologist and a lawyer specialising in human rights. Assurances were given by the Minister for Health and Social Services that: "no stone would be left unturned", "that the investigation would be robust, independent and thorough" and "that the terms of reference have been clarified and strengthened by making it fundamentally clear that Verita was investigating the details of what happened and the actions of others." Also, Verita were now to add an addendum to their report to include matters that might be outside the term of reference but about which the Minister should be aware.

It should also be recalled that the investigation had already cost in the region of £250,000, therefore there was little to be gained by ending Verita's investigation.

I understood that these new Terms of Reference were fully inclusive and would cover the suspension of the Consultant Obstetrician and Gynaecologist. I believe this was the Assembly's understanding also. Given the concerns being expressed by Members regarding the continuation of this lengthy and very expensive suspension of a respected Hospital Consultant, I also believe they would not have supported the retention of Verita if they had not been reassured that Verita would be addressing this matter.

However, I have discovered that Verita are now saying that the suspension of the Consultant does not fall within their remit, and that they have asked the Minister for Health and Social Services to extend their Terms of Reference again, so that they can report on matters relating to the Consultant's suspension.

I made this discovery in conversation with Verita. I had taken up Verita's invitation to meet and during my meeting I discussed suspension issues and possible conflicts situations arising from them. I was also made aware of a Risk Assessment procedure which is normally adopted before suspending employees in the U.K. As the States had recently approved my proposition relating to suspensions, I asked if I could be forwarded details of the procedure.

Upon receipt of the details I contacted Verita, asking that I meet again informally to discuss the Risk Assessment procedure and to formally discuss whether the procedure had been adopted before suspending the 2 hospital employees. It was as a result of my informal meeting on 5th August that I learned that Verita did not consider that the suspension matters were within its Terms of Reference. This I found to be most surprising and at odds with the assurances given by the Minister for Health and Social Services.

After my meeting with Verita I e-mailed the Minister for Health and Social Services expressing my surprise at Verita's comments, and thought I could speak for a number of States Members who, like me, were persuaded to give Verita the opportunity of continuing with its review on the grounds that it would be thorough and the acts and omissions of individuals would be investigated. I believed that Verita's report and reputation would be tarnished if it failed to address the suspension. By stating that it was not within its terms of reference would not be seen as a valid reason, but a "cop out" which would impact unfairly on Verita. I asked that the suspension matter be included in the review.

Unfortunately the Minister did not respond in a positive manner because she has stated that she was seeking further advice, including that of the Chief Minister. I informed her that, as I would be away from the Island shortly and unless I received a reply by 5 p.m. on 10th August, I would lodge a proposition seeking States' support for Verita to investigate the matter in line with the Terms of Reference. I extended the time however; and as no further communication had been received by Friday morning 14th August, I submitted my proposition to ensure that it was submitted before I went on leave and lodged in time for debate on 8th September. I believe the Minister should honour the promises she willingly gave when seeking support to defeat P.76/2009.

As mentioned above, the cost of the suspension is in the region of £1 million. The reasons for this lengthy suspension and the tardy manner in which it has been allowed to continue must be explained to the Assembly, the public, other hospital staff, the suspended Consultant and the bereaved family.

In an attempt to save money, the Minister for Health and Social Services, with the support of the Council of Ministers, was proposing to close down a family centre and reduce patient transport services for some of our most vulnerable residents, and has to seek emergency funding to improve conditions for elderly dementia patients; yet is prepared to ignore the hardship caused to a dedicated and highly respected States employee and the wasting of taxpayers' money by allowing the suspension not only to continue, but to be unchallenged.

Verita's Terms of Reference includes "Reviewing the main actions taken by the Health and Social Services Department in response to the death of Mrs. Elizabeth Rourke including its own interim internal investigation. This will include establishing whether or not there are any significant omissions to the investigation and, if so, exploring these."

One of the main actions taken by Health was to suspend 2 surgeons, one of whom is still suspended. Apart from the personal hardship and suffering this must have caused, the Consultant is **still** suspended with a cost to the public of around a million pounds. There are a number of questions to be asked, and someone must be accountable for implementing the suspension and allowing its continuation for almost 3 years. The Minister has made a number of statements, such as no stone would be left unturned, the truth will be known, etc., yet does not want Members to know why 2 doctors were suspended while other doctors equally involved with the operation remained at work. The Terms of Reference are clear that the main actions taken by HSS will be reviewed. Suspension is a main action, as a precautionary measure to protect patient safety while an incident is investigated. And the decision not to suspend other doctors is also a main action. The decisions of HSS in relation to all the doctors involved in the incident form part of HSS's response to the death of Mrs. Elizabeth Rourke and should be investigated. This will be a straightforward matter in the case of most of the doctors, but not all of them.

As mentioned above, even if members do not believe that the suspensions fall within the Terms of Reference, there is the addendum. In her July letter, the Minister was allowing for a "catch all" to include matters which might be outside the Terms of Reference but which Verita decided that the Minister for Health and Social Services should know. Therefore the suspension could also be reviewed via this clause.

### **Financial and manpower implications**

The cost of the review is not known, but presumably the Minister for Health and Social Services will have budgeted for it and sufficient funds will have been made available. If Members share my view that the suspension is a main action taken by HSS and is therefore within the Terms of Reference, it will be for the Minister to fund the review as she should have taken the suspension issue into account at the outset.

If Members do not support my proposition, presumably the suspension issue will be investigated independently and paid for from within Health's budget. There is also the ongoing cost from the continuation of the current suspension, therefore there is nothing to be gained by rejecting my proposition.