STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY

7. Statement by the Minister for Health and Social Services regarding a review following the death of a patient during an operation:

7.1 Senator J.L. Perchard (The Minister for Health and Social Services):

I am not sure if it has been distributed, unfortunately. Perhaps it could be distributed and Members could follow me. Is it in order to continue without the statement on Members' desks?

The Deputy Bailiff:

That is up to you, Minister.

Senator J.L. Perchard:

Okay. This statement concerns the Royal Court verdict delivered on Tuesday, 27th January 2009 in relation to Dr. Dolores Moyano Ontiveros, who was employed as a locum registrar at the Jersey General Hospital in 2006. I know that all States Members wish to join me in expressing sadness at the unexpected death of Nurse Elizabeth Rourke following a routine surgical operation on 17th October 2006. Elizabeth Rourke is remembered by her colleagues with great love and affection. I know too that Members will wish to join me in thanking all of those doctors and nurses and support workers who sought to intervene on that sad day to try to save Mrs. Rourke's life. The Royal Court heard, and we did also via the media, that heroic steps were taken by a very special group of people who came together to do all they could to save the life of a patient and colleague. I am sure that Members will understand the predicament which many of our staff at the General Hospital have had to endure for the last 2 years. When a death occurs it is always a sad time and the way in which survivors, families and friends and colleagues are able to come to terms with their grief is by talking about that death, what happened, why it happened, and what the deceased meant to them personally. This natural grieving process has not been able to take its course in the General Hospital. The matter almost immediately became the subject of a criminal investigation and we know as such participants and witnesses could not discuss any aspect of those tragic events. Accordingly, many staff groups throughout the General Hospital and beyond have had to continue to provide a professional service to patients and to clients and yet have not been able to obtain comfort and resolution. I would like now to advise Members on what is to happen next. Firstly, Members will appreciate that the judicial process falls outside my authority; however, I expect the Deputy Viscount will now seek to reconvene the inquest into the death of Mrs. Rourke. Secondly, I have determined that the circumstances surrounding the death of Mrs. Rourke require a significant variation to the established departmental practice which is activated when a serious untoward incident occurs. What will now happen is that an internal team of trained senior health and social care practitioners who are working in other parts of our department unrelated to surgical services will be formed. The team will work alongside one of the United Kingdom's experts in the field of investigation. This team and expert will then work under the leadership of, and will be accountable to, a senior and eminent professional drawn from one of the mainland's prestigious bodies; an agency such as the Royal College. This person will be recommended to me by the National Director of the National Clinical Assessment Service, which is a service which has great experience in this arena. I have determined that the name of this professional and his or her background will be published as early as it is possible so to do. The terms of the reference for this systemic inquiry will be agreed by me. In the interest of openness and transparency the findings of this review will be placed in the public domain. Thirdly, the Health and Social Services Department will need to determine whether an individual or individuals have contravened the rules and regulations which are in place to satisfy good governance at all times. It is not possible for me to say more on this matter at this time. The States of Jersey has a duty of confidentiality to all its employees and I wish to respect and comply with that duty. I have one more important matter left to relate to Members. A little has been made of 2 incident reports which were referred to in Saturday's edition of the *Jersey Evening Post*. This implication has been that these reports in some way rang alarm bells about

Dr. Moyano Ontiveros' competence that were ignored. It will come as no surprise to Members that I have read these reports and I can assure Members that these reports are entirely innocuous. They are routine reports. Having said that, these 2 innocuous reports will form part of the review in order that my observations about them can be confirmed. Members and the public of large will also be able to make their own judgment on these reports. I repeat, there will be a systemic independent review undertaken into the circumstances surrounding the tragic death of Mrs. Rourke. It is in everyone's interest that this review is conducted promptly but with due regard for the need for diligence and detailed investigation. When the results are known they will be placed in the public domain. Until that time I have requested that no one in my department give further comment, however helpful they may wish to be. Other than divulging the terms of reference for the inquiry and the name of the person who will lead the inquiry I expect to be making no further comment until the results of the review are known. I ask Members similarly to act in a considered way, understanding that in due course the truth will out.

The Deputy Bailiff:
Now 10 minutes is allowed for questioning. Senator Syvret?

7.1.1 Senator S. Syvret:
Will the Minister undertake then to distribute the 2 warnings that he described as innocuous to Members and to indeed make them more publicly available? If he does not have them I am happy to do so.

Senator J.L. Perchard:
The review that I have announced a moment ago will have the reports. There is a process here, even if the Senator is not prepared to be patient. The review will consider the reports that I have referred to. The reports will be put in the public domain in due course. I do not intend to have mob rule decide this case. **[Approbation]**

7.1.2 The Deputy of St. Martin:
Again, I do not know whether the Minister will be able to help answer this one, but the case occurred 2 years ago. Has the Minister any idea why it took 2 years for the case to come to court, bearing in mind a not guilty verdict was reached? Why did it take 2 years plus to get to the Royal Court?

Senator J.L. Perchard:
I suggest the Deputy of St. Martin refers his question to the Attorney General.

7.1.3 Deputy R.G. Le Hérissier:
Notwithstanding this excellent initiative, would the Minister not acknowledge that by setting up an internal group to work to outsiders he may be setting up people who, for example, may be reluctant to question people higher up the management or surgical or professional hierarchy than the members of the team? Would it not have been advisable to set up a team totally divorced from the management and professional structure of the General Hospital?

Senator J.L. Perchard:
An S.U.I. (Serious Untoward Incident) has established, whether it be in Jersey hospitals or through the National Health, systems in place as to how the investigation takes place. Normally it would be undertaken by personnel not associated with the event but within the same health service. As I have said, I am stepping outside the normal boundaries of an S.U.I. investigation in that the leader of the investigation will be an eminent professional, probably from the Royal College, and there will be another independent U.K. expert who is an expert in investigative matters with regards to health issues.

7.1.4 Deputy R.G. Le Hérissier:
A supplementary. Would the Minister not acknowledge that the Jersey Health Service is a much tighter health service than a very big trust where it would often be the case that people on such investigation would not know each other or come across each other in a professional sense?

Senator J.L. Perchard:
I have taken advice on how to structure this serious untoward incident review, advice from outside my department. It is imperative that there is local knowledge when undertaking a review if it is to be credible. It is also, in this case, imperative that there is neutral objective experience. I think bringing this together we have both.

7.1.5 The Deputy of St. John:
Could the Minister explain to us why an investigation is to be held, then why are fingers already being pointed to one person? In fact, that person has never been called to give evidence in court. Is it right that an impartial investigation is going to happen and you have already pointed the finger, or somebody has already pointed the finger, by suspending a person?

Senator J.L. Perchard:
The suspension of a consultant at the Jersey General Hospital happened immediately after the tragic death of Nurse Rourke. I do not consider any finger pointing has taken place. Any investigation will look at all the facts: who was involved where, what happened, where they should have been and why, if they were not, they were not there. There are no boundaries here. The investigation will be transparent. It will be decisive. I urge Members to be patient and not assume anything.

7.1.6 The Deputy of St. John:
Can the Minister please explain why the person who has been suspended has not been reinstated given that the court case is finished?

Senator J.L. Perchard:
I am not prepared to prejudice the outcome of any inquiry by discussing the detail. I think it is quite unreasonable of the Deputy of St. John to ask such a silly question.

The Deputy of St. John:
On a point of order, could I ask the Minister to withdraw that comment?

7.1.7 Deputy A.E. Jeune:
The statement that we have received from the Minister does not address my earlier questions in which I asked for when it will commence and when the expected outcome will be, i.e. can we have the timeframe start and finish, anticipated finish, date and an anticipated cost? Could he clarify for me please, on the first page of his statement where he refers to: "Require a significant variation to the established departmental practice", could he confirm that those issues have in fact been looked at and resolved already?

Senator J.L. Perchard:
I think there are certainly 2, maybe 3 questions there. The appointment of personnel from outside the Island to lead this inquiry, when I make this appointment, will determine as to when the inquiry will start. There is a desire to make these appointments in short order and an inquiry will assume its role immediately after. As to the cost of the inquiry, it is unknown at this stage. I have to say I am not sure. While I am aware of the pressures on the Health Service financially I think this is important that the conclusions of this inquiry are not prohibited by cost. Sorry, I have forgotten the third one.

Deputy A.E. Jeune:
To clarify: "To require a significant variation to the established departmental practice." Has that departmental practice, changed accordingly?

Senator J.L. Perchard:
The significant variation that I referred to was also answered a moment ago to a question. Normally a serious untoward incident is investigated within the department by personnel not involved in the incident. My departure from normal practice is to import a professional investigator and a chair, hopefully from the Royal College, who will provide neutrality and rigour to the process involving this investigation. I hope that satisfies Members.

The Deputy Bailiff:
Are you asking a supplementary, Deputy Jeune?

7.1.8 Deputy A.E. Jeune:
If I may. I just want to be clear that the errors that were highlighted in October 2007, those errors have now been remedied? We are not waiting for another inquiry in order to get them remedied?

Senator J.L. Perchard:
I am not sure as to what errors the questioner is referring to and I want to again warn the questioner that we must not stray into territory that may prejudice the outcome of any inquiry. I ask for restraint from Members that we need to get to the bottom of this and there is no intention otherwise. I just do not want you to start discussing the detail and any suggestion of errors.

7.1.9 Deputy T.M. Pitman:
Just a clarification of Senator Syvret's earlier question. We have heard 2 reports described as routine and innocuous and yet there has been a tragic result to all this. Could the Minister just clarify what he means by innocuous, please?

Senator J.L. Perchard:
When the reports are presented to the review body and then become public, Members and the public will have the opportunity to decide upon the reports. I suggest they will agree with me; they are very routine and innocuous.

7.1.10 Senator S. Syvret:
The Minister just said he did not like talk of any errors. A person is dead needlessly. If that is not an error I do not know what is. Will the Minister say whether he considers it appropriate for a senior human resources member of Health and Social Services to write in these terms 6 months after the death of the patient: "Hi. I have been working on a timeline to cross-reference how and when we have complied with the doc's disciplinary procedure. We are mostly okay. It is quite tricky given the level of detail in the procedure. I will forward you copies when I have finished. The bits where we have slipped a little we can justify, may need a couple of file notes. We failed to keep the Minister updated in the correct formal manner." The H.R. (Human Resources) person goes on to say: "All this seems a bit O.T.T. (Over The Top) but the legal representative of the excluded local consultant is being so pedantic." A man's reputation and career being destroyed is merely a matter of pedantry, according to this H.R. manager. The same email goes on to say: "Also, I have had to allocate roles as per the procedures; the medical director, you are the case manager. The guidelines state you must consider all the issues around pay, exclusion from premises, *et cetera, et cetera*." Here we have 6 months later file notes being requested …

The Deputy Bailiff:
What is your question, Senator?

Senator S. Syvret:
Does the Minister consider it appropriate for a senior H.R. member of Health and Social Services to write in these terms and frankly reveal the process, the exercise of trying to cover-up their errors and omissions 6 months after the death of the patient?

Senator J.L. Perchard:
If the Member has evidence that will be of value to the inquiry, such as he claims to have, he must present it to the inquiry. It is a very powerful allegation he has made. I really am not sure whether it is viable or it is perhaps one of the anonymous blog writers that he receives. I want to say one thing: I urge the Senator to please stop trying to make political capital from this death. We must go through a rigorous process and ensure that justice is done. There is no attempt, certainly by this Minister, to seek cover-up.

Senator S. Syvret:
On a point of order, the Minister just accused me of seeking to make political capital out of something as serious as the death of a person. This I consider to be one of the most profound possible examples of accusing a Member of false motives, questioning a Member's motives, and I require the Minister to be required to withdraw that remark.

The Deputy Bailiff:
I am afraid, Senator, the expression "making political capital", I must confess, is an expression I have heard many a Member throw at another and I am not sure that it comes within the Standing Orders.