

## **Shortcomings of the NHS and how it may be improved...**

For NHS staff working in hospital mortuaries, the Department of Health (DoH) produced "Care and Respect in Death: Good Practice Guidance for NHS Mortuary Staff" in August 2006.

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4137969](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4137969)

That guidance fails to address many of the issues raised in this section of this website. Even so, staff working on hospital wards may not be familiar with that guidance. Very few will know about basic legal rights, e.g. that the body of a baby, young child or adult, can be taken immediately from the hospital at the time of death, as long as a coroner is not already involved. For more details on who can collect a body, see the 'Body Collection Form' and the list under 'Who can collect a body?'

Hospital staff do not have any of the powers available to coroners. However, some hospital staff act as though they have even more powers e.g. staff may think they can prevent the collection of a body, until they have had time to complete various tasks and fill in forms. Once the body is taken to a mortuary, nursing and other therapeutic staff may no longer be involved. Managers and morticians usually take over and can be obstructive and officious, creating illegal obstacles to the immediate collection of bodies. Those may obstruct the collection of bodies for a day or two or even longer, especially late on Friday afternoons and when a bank holiday is about to start, or has started. Apart from it being criminal to place any condition on the collection of a body, it is grossly unprofessional to defy emergency health principles, which alone demand that the collection of bodies be made easy and informal.

The DoH has long been aware of the illegal retention of bodies and has knowingly decided to take no action. It has been claimed by a DoH civil servant, that Andrew Lansley, once acting Secretary of State for Health was aware of the issues but took no decisive action. Rather than ensure all NHS staff comply with the law at all times and meet the immediate emotional needs of those who are newly bereaved, the DoH kicked and continues to kick, the matter into the long grass.

The DoH seems incapable of providing personalised health care, giving instead, overriding priority to bureaucracy and management. Some suspect that the DoH may be working to a hidden agenda. Whatever is really going on behind the scenes, it remains criminal for hospital managers to place their own bureaucratic demands above the law. It either is or should be illegal for any NHS staff, to place bureaucratic demands above the emergency emotional needs of those who are newly bereaved.

## **Court Cases**

The law is very simple and can best be illustrated by an 1841 case in the court of the Queen's Bench and a prosecution which followed in 1842, in what would now be a Crown Court. (For details on case law, see main page titled "Collecting the body").

A publicly funded trial (*R-v-Fox*) was against prison staff, for refusing to allow the immediate collection of a body. One of the judges, Lord Denman, said the refusal to allow the body to be collected was, "a gross outrage upon society" and contra bonos mores, (against good morals). The Solicitor General commented, that the law as it stood then, "would be worthy of imitation by all future legislators". In other words, the law should always remain the same. The judges issued urgent instructions for the body to be released, without preconditions or delay. They said there can be no excuse for public services to be ignorant of this aspect of law.

As a consequence of the 1841 case, one of the jailers was prosecuted in 1842 and found guilty of the criminal offence of preventing the collection of a body. The police must have been responsible for that prosecution.

The judge at the criminal trial commented, that the public servant had acted in abuse of his public office and had disregarded his public duty to ensure the body could be collected without delay. The judge also stated that the refusal of a public service to hand over a body, was "oppression" of those who were bereaved, "contempt" for the "laws of the realm" and against "the Queen, her Crown and Dignity".

To this day and probably because most public servants are inhibited by the strong taboo around death, they never come to understand relevant law. Gradually, the NHS and other institutions, have effectively assumed power over dying and death, without understanding the unintended consequences. Apart from the criminal activities which are increasing, staff are unwittingly depriving us of knowledge and skills to cope with the immediate impacts of bereavement.

If NHS staff are to be adequately educated and informed, on both law and psychology, the DoH must grasp this nettle very decisively. Right now it is sticking its collective head very firmly in the sand.

### **Ending "oppression" by hospital staff**

The psychology of oppression was understood by the courts in 1841 and 1842. Why is it not understood or not regarded as important, by Ministers and civil servants in the DoH and NHS staff in 2013?

Oppression is understood by social workers, who are legally required to comply with a code of practice, when helping others. That includes making sure lawful rights are not obstructed, relevant information is provided so others have control over their own lives, in terms of their varied norms, values and beliefs and attention is drawn to anything which adversely

impacts on standards of care, ranging from lack of services to unlawful activities. Despite that legally imposed duty and an understanding of the importance of crisis work, they have never been placed within a modern picture of coping with the first minutes, hours and days when someone very dear to us has died. As the DoH is responsible for both health and welfare services, it must reflect a sound understanding of law and psychology, by placing those with the necessary skills, at the centre of modern emergency services.

For the NHS., 21st century body snatching cannot be the way forward, not least because it is illegal and for some it is oppressive.

### **Police to prosecute someone in the NHS?**

The law has not changed since 1841. With more of us being better educated on law and psychology, it is only a matter of time, before someone in the NHS is prosecuted for the same criminal offence.

They could not escape prosecution, by claiming someone more senior had given instructions to detain the body. They could not escape prosecution, by pointing to the fact that Ministers of State for health have decided not to put an abrupt end to the illegal activity, which is spreading like an infectious disease through more and more hospitals. Many will see that refusal to comply with the law as grossly irresponsible. In addition, it encourages NHS staff to have a callous disregard, for the urgent needs which many of us have, when coping with the emotional impacts of someone's death. The NHS has always been poor at understanding and meeting emotional needs, whether connected with bereavement, major amputations, degenerative diseases and other major changes which shatter our hopes, our dreams and our attachments to each other. Indirectly, that failure prevents us from maintaining our full potential. That in turn increases public expenditure. If that is understood by Ministers of State for health they need to instruct DoH staff to give basic lessons to all NHS staff on prevention or prophylaxis.

In terms of justice and fairness, it would make more sense for the police to prosecute the R. Hon. Jeremy Hunt MP, who is current Secretary of State for Health, rather than someone very junior and vulnerable to pressures from managers. To reiterate, in 1841 and 1842 judges stated that there can be no excuse for ignorance amongst public services, on this aspect of law. Jeremy Hunt could not plead ignorance. He could only tell the courts that he and the DoH are above the law and see how judges of today react to that audacious statement. Ministers can be prosecuted as private individuals so would he face a fine or imprisonment, if the police and Crown Prosecution Service decide now, that is the time to teach NHS staff a very clear lesson?

### **DoH and tactical delays to avoid compliance with the law**

The DoH has a 'Release of Bodies from Hospital Working Group'. If that group influenced in any way, the content of the national guidance document mentioned above, none of the

group members pushed for or obtained, wording which displays a clear understanding of law and crisis psychology. Indeed, there is no reason why any of the group members should understand either subject. It might even be suspected, that the DoH chose members who would not rock the boat of complacency, as they would not have the knowledge to recognise when an activity is illegal or unlawful. Civil servants may be pressured from above to maintain the status quo and not look too closely at what is really happening on the ground. As law professor Paul Campos said, "It's difficult to get someone to understand something when their salary depends on them not understanding it".

The notion of releasing a body is misleading. It sounds like prison staff having control over a prisoner and the power to decide if they can or cannot be released. Note also the connection with the public servant, who was prosecuted for preventing the collection of a body from a jail. Hospital staff do not have powers to detain a body, so do not give permission for it to be released. They must allow, if not encourage immediate collection by anyone with a legal right to collect it.

There are no legal procedures which must be followed before a body can be collected. For example, it is not necessary to wait until a doctor has completed and issued a free medical certificate about the cause of death. Note, that the free certificate referred to here, is often confused with a "Death Certificate" which is a different document, to the sort purchased from a registrar of births and deaths. When the law is revised, the two forms will require very different names, to end the confusion. To completely end any further mention of "Death Certificates", one could be called a "Medical Certificate on the Cause of Death" and the other a "Registrar's Administration Certificate".

### **Hospitals & Householders**

In law, a hospital is no different to any 'householder'. If a person dies in someone else's home, they are initially responsible as a 'householder'. Unless a coroner takes control, the householder has immediate "lawful control". They lose that control, the moment someone with a greater right asks for the body to be handed over. "Lawful control" then passes immediately to them and they must not be obstructed. Even they would have to hand over the body to someone else, if that someone else has an even greater right to take "lawful control".

"A householder under common law must take responsibility for the burial if no-one else does so - hence burials arranged by hospitals derive from and may still be limited to common law", (Bradfield. J.B., (1994:42-43), 'Green Burial - The DIY Guide to Law & Practice').

### **What can be done with a body?**

Most references to law mention a duty to bury but as stated elsewhere on this site, a body can be dealt with by "burial, cremation or any other means" and that includes preservation.

Unless wanted, funerals are unnecessary. The very notion of a 'funeral' refers to the carrying of flaming torches at night-time burials, so we have long lost touch with 'traditional' funerals. They will continue to change as society changes.

Coffins are not required by law for any purpose. That includes how a body is collected and transported from and to any place. No permissions are required to collect and transport a body, as long as it is not taken outside England & Wales, which are treated as one area. Any form of transport can be used, such as a car or van, at any time of day or night.

An undertaker has no right to collect a body, unless they have been given instructions, to act as the servant of the person who has taken "lawful control". In other words, an undertaker is a trader and is always acting as a servant for someone else, usually the nearest relative. As mentioned under the title 'Who can collect a body?' it is the nearest relative who usually has the legal right to collect the body.

As no public officials have to be informed about plans to collect or transport a body, the William Harvey Hospital in Kent, was wrong to tell a family that they had to contact the police before collecting the body of a relative. Relatives knew they did not have to inform the police. They knew staff in other hospitals had been wrong, when they advised that fees have to be paid, if taking a body over a parish or county boundary. There are no such fees. The idea probably comes from a misunderstanding about former laws, at a time when various fees had to be paid at toll bars, on many ordinary roads.

The William Harvey Hospital is part of a university teaching organisation, but continues to issue nonsensical information. For example, it says Social Services is the Benefits Agency and a form must be given to an undertaker. To know that undertakers do not have to be used for any reason, university teaching staff need only read the details printed by the Department of Work & Pensions, about who can claim a Funeral Payment. Even when undertakers are used, there are no legal forms which have to be given to them. The William Harvey Hospital's bereavement booklet is substandard by any measure. Rather than scrap it, the Chief Executive decided to keep issuing copies, until the current stock runs out! That suggests that other university teaching hospitals may have taken decisions to remain substandard in other ways.

NHS staff must stop acting like body snatchers and prison guards and start acting in ways which protect and promote the emotional wellbeing of those who are newly bereaved. That is a standard which many ordinary and university teaching hospitals are incapable of achieving, without guidance from the DoH.. They cannot achieve what they do not understand. Worryingly, a dire lack of understanding of applied law and applied psychology, is at the root of the current problem. Without a radical shift in thinking within the DoH., an urgent solution will remain out of reach.

**Flawed guidance and body-ownership nonsense**

In some ways, the DoH guidance misleads staff, who in turn mislead, those who are newly bereaved, when they may be screaming within a deafening silence for the world to start making sense. That guidance gives the impression that parents can only take the bodies of their babies from hospitals. It does not make obvious, that the collection of a body of anyone of any age, must not be obstructed, when someone with a greater right to "lawful control" makes contact with the hospital or turns up.

In 1995, the Royal College of Nursing (RCN) and what was then the British Association for Accident & Emergency Medicine (BAAEM) issued excellent guidance in terms of psychology. However, they were wrong to claim that when someone dies in a hospital, their body belongs to that hospital. Tom Sackville, the then Parliamentary Under Secretary of State for Health put his name to that statement. Civil servants at the DoH appear not to have warned the Minister that a change to that point of law would be necessary, before he could give his endorsement. There is every reason to believe, that civil servants either do not understand the law or they are deliberately avoiding it, for reasons which have yet to surface. The Alice Barker Trust contacted the RCN and as a result, a correction was later published in the Nursing Times.

Immediately after death, a body belongs to no-one, not even the Crown. It is simply a question of who has the immediate right to take "lawful control" over the body.

What the RCN., BAAEM and Health Minister did in 1995, was flag up as assumed fact, one of the most dangerous myths within the NHS.. Dangerous, because A&E and other NHS staff were acting as though hospitals really do own bodies. Many still act in that way, in terms of attitude, body language, awkwardness and even officiousness when challenged. Theft is theft and crime is crime, so staff who believe the body-ownership nonsense, may react as though their first duty is to protect the hospital's property. In doing so, they could be charged with a criminal offence. (See above reference to 1841 and 1842 court cases). Then it was a prison officer. Next it could be Jeremy Hunt, Norman Lamb MP, a nurse, mortician or hospital porter and they could expect a severe punishment, in view of the ease with which it is now possible to find sound information on law and psychology.

### **Psychology and existing law not used to protect and promote health**

Everything in the NHS should be geared to protecting and promoting health, especially through empowerment during emotional and social crises. That is possible within the law as it stands. Were that not so, all NHS staff and the DoH should be giving top priority for a 'therapeutic' bereavement law. At present, some NHS staff act as though those who are newly bereaved should be punished, reprimanded or obstructed. That comes from a lack of education on the impacts of emotional crises and how to help rather than hinder or worse, by causing unintentional and unrecognised torment and in the name of the NHS.. In short, the law is not the problem but ignorance of it is, along with ignorance of applied crisis psychology.

As practices within the NHS are deteriorating, there has never been a more urgent need for psychology experts within the DoH., to issue very clear guidance on how to help, in the first hours and days after deaths. Until now, the DoH has relied solely upon staff who have since the inception of the NHS., been left to deal with bodies and have little or no education and experience in meeting emergency emotional and social needs. What had in national NHS policy, been bad practice for almost 40 years, is now considered good if not best practice, without any explanation or critical analysis. That has resulted in the illegal activities referred to here.

At any time of day or night, all hospitals should be able to call in health and welfare staff, who are experts in dealing with emotional and social crises. They must have a sound grasp of crisis psychology and relevant law. They must know when to ignore nonsensical guidance and how to create a relaxed and welcoming environment. They are likely to ooze a relaxed confidence and warmth and be role models for unskilled staff. In that way, the highest standards are achieved.

Without that urgent guidance, some NHS staff will continue acting like 21st century body snatchers. Staff in all hospitals need to know why the police may be tapping them on their shoulders, with a view to spending time elsewhere, at Her Majesty's displeasure.

Staff in all hospitals, need to know who is exercising "lawful control" over bodies in any NHS buildings. When relatives are visiting someone who is dying, they must be seen as having "lawful control" at the time of death, if they will later collect the body or ask someone else to do so. Hospitals should only be seen as having "lawful control", if there are no known relatives and no-one else has said they will be collecting the body. Undertakers never have lawful control when they have a body in one of their buildings. When hospitals are acting on the same basis, they should also be seen as providing a service for those who do have "lawful control". If there is any doubt on this point, the law needs to be made very clear, not least because of emergency health principles.