

LIE 10

Reference.....

To: Mike Arthur - H51

506 EH

From: Richard Gutowski - MBIB

2011 MT

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GRO-C

Pages to follow: 1

DRAFT

Mr Davey PS/MS(H)

From: Mr Wilson MCA
Date: 17 October 1989

HIV, VALIUM/LIBRIUM LITIGATION

The Minister is aware of the impending HIV litigation in which the Licensing Authority and the Committee on Safety of Medicines (CSM) are being sued.

2. Writs have also been served against the Licensing Authority and the CSM alleging negligence in not warning of the dangers of benzodiazepine dependence. A case involving Valium will shortly begin hearings of preliminary issues.

3. In connection with the Valium case leading Counsel (Mr Andrew Collins) has strongly urged that in the hearings of preliminary issues he should argue that neither the Licensing Authority nor the CSM owe a duty of care to an individual and hence had no case to answer. This argument has not previously been run in litigation involving the Licensing Authority/CSM. But in two recent cases it has been held that a public body set up to protect the public at large had no duty of care to individuals. Counsel thinks these arguments should be run in the Valium case. He takes a similar view, we understand, in relation to HIV litigation.

4. A written opinion from Counsel on this matter is due any day - we have been pressing for it for some time. We had then intended to seek MS(H)'s decision on whether he wished the no duty of care issue to be taken.

5. The Opinion is not yet available. A summons for Directions on the HIV litigation has now been set for Monday 23 October. On that day our Counsel will be expected to indicate the points he wants to take as preliminary issues so that these can be timetabled by the Court for subsequent hearing. It may be very difficult to raise the no duty of care issue later in the HIV case if it is not identified on Monday as a possible preliminary issue.

6. We would accordingly like MS(H)'s view on whether to instruct Counsel to indicate on Monday that Licensing Authority and the CSM may want to raise this issue in the preliminaries. If he agrees, does he also wish to extend this to cover the position of the Secretary of State in respect of his duties in HIV legislation?

7. A draft submission in relation to the Valium/Librium cases had been prepared but not yet forwarded as we were waiting for the written opinion from Counsel. A copy is attached for information. Paragraph 6 refers to the legal arguments in respect of duty of care. Paragraph 7 to the practical advantages of establishing in principle that the LA and the CSM had no duty of care. Paragraph 8 refers to the possible presentational/political arguments against running the duty of care issue.

8. We would be glad to have MS(H)'s views, as at paragraph 6 above. His advice is needed urgently in view of the summons on HIV on 23 October.

C H WILSON
Medicines Control Agency
Room 1031 MT Ext **GRO-C**

Enc.

RE: LITIGATION

From: A. W. Reek AIDS Unit

Date: 17 October 1989

To: Mrs. Walden
Mrs. Staniland
Mr. Arthur HSIA ✓

RE: LITIGATION

1. You asked for a note of progress on discovery within the AIDS Unit.
2. As you know, the AIDS Unit is a small and fairly recently created unit based in Richmond House. Work on AIDS was previously the responsibility of other policy divisions. The Unit has in excess of 400 registered files, and senior staff and professionals keep their own unregistered papers (perhaps 20 filing cabinets, though this is, of course, hard to pin down).
3. Over the summer, the 11 files (registered and unregistered) most likely to contain material of relevance were identified, and 68 items extracted. This took the equivalent of one person week.
4. Since relevant papers may be scattered over a wide variety of files, a comprehensive search might involve consideration of at least one third of all registered files and would involve the papers of most senior staff and professionals.
5. I hope this is helpful.

GRO-C

Richard Reek
Rm. A402 RH

GRO-C