

Mr R Powell

Ref: hiv14f

From: Dr A Rejman MEDSEB/B

Date: 14 June 1989

Copy: Dr J Metters
Dr H Pickles
Mrs Massiah
Mr Dobson
Mr Blake
Mr Canavan
Mr Arthur

HIV HAEMOPHILIAC LITIGATION

1. Thank you for your minute of 13 June 1989.
2. On the copy of the summons you have sent me there is no indication as to who the defendants are. It would be helpful if the defendants knew who they each were to allow the possibility of a meeting to discuss the possibility of a joint approach.
3. Since the list of potential defendants will be different in the various cases, I think the Department should insist upon being given details of each and every defendant in each and every case that the plaintiffs wish to pursue under this joint action.
4. I think it imperative that we be present at the proposed conference with counsel on 21 June.
5. I assume that the reason for protecting the identity of the plaintiffs is for reasons of medical confidentiality. However, I think the Department must be insistent that the names, addresses, dates and places of treatment must be available to them immediately so that a defence may be prepared.
6. There are marked differences in the various cases as we have discussed before. In particular these relate to such factors as:
 - i. the exact dates on which factor VIII or other blood product was infused to a given individual patient. This is of crucial significance as it must be related to the knowledge of the existence of HIV and to the time when testing for the virus and methods for its inactivation became available.
 - ii. The exact date when the patient was found to be HIV positive, and particularly if he has ever been shown to be HIV negative

- iii. exact details of blood products given on each and every date.
 - iv. the severity of haemophilia of the individual patient.
 - v. details of the specific incident leading to the decision to treat an individual patient on a specific occasion and any other factors that may have influenced the clinical judgement of the physician concerned.
 - vi. in some cases (we know of at least one - though presumably not covered by this joint claim) a plaintiff alleges that he was treated against his specific wishes - presumably a case of common assault.
7. In view of the above and our previous discussions I believe that it would be in the interests of the Department to have several individual "test" cases to try to sort out individual points. There is no advantage to the Department in a blanket defence. Such an approach is only of advantage to those haemophiliacs who are too well off to be supported by legal aid as well as those haemophiliacs where an individual court case would fail because the specific circumstances do not justify a judgement in favour of the plaintiff.
 8. The only justification of a joint defence would be if the plaintiffs claimed that all Factor VIII and blood products were HIV infected.
 9. The proposed approach by the plaintiffs' solicitors may be a way of trying to avoid suing specific doctors. It is noteworthy that the solicitors coordinating this action are based in Newcastle. The local consultant in charge of the Haemophilia Centre has on several occasions appeared on behalf of the haemophilia community, most recently in a Newsnight broadcast. He may feel that by such an action he will deflect criticism of his management of patients.
 10. I have spoken to Dr Rotblat and Mr Gutowski of MD. Apparently the Licensing Authority and CSM have only been named as defendants in one case, where a writ has been issued, but no further action has been taken. They are relying on HS1 to deal with all the other cases, where SoS is named in his capacity as head of DH. Their legal advisor is Mrs Armstrong of SOLC5. In most cases, specific manufacturers have not been named in actions, and their general attitude has been that infection may have taken place a long time before HIV testing became available.
 11. If the Department is going to offer any assistance to Regions, or if any case proceeds, ^{MD}they need to be informed. Their usual attitude is not to assist co-defendants, but that everyone must look after themselves. If we consider it necessary to use any data that they have on file, then there may be restrictions because of confidentiality under Section

118. They do not usually supply such information unless compelled to do so under Court orders.

12. I have informed MD of the present attempt at concerted action by the plaintiffs and would suggest you copy details to them. We should also pass on any information which we obtain at the meeting on 16 June.
13. At the proposed meeting at the Royal Free Hospital on 16 June, it might be interesting to find out what will be the attitude of the medical protection organisations in respect of doctors acting as expert witnesses for plaintiffs in one set of cases whilst being co-defendants in another set of cases.
14. In conclusion, I believe that we should oppose this attempt by the plaintiffs to bring a joint action. In addition I think we have now reached the stage, much earlier than we had originally thought likely, when we will need to prepare a submission to Ministers suggesting a formal discussion with Regions about a joint defence strategy. In view of this, I think that an urgent meeting is necessary prior to the meeting with counsel.

GRO-C

DR A REJMAN

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