

In reply please quote

TCB/FPD/2004/0781

2 June 2004

Mrs. M. Murphy

GRO-C

Liverpool

GRO-C

**GENERAL
MEDICAL
COUNCIL**

*Protecting patients,
guiding doctors*

Dear Mrs. Murphy,

Re: Dr. Charles Hay

I am writing further to our recent correspondence.

I have now received the enclosed response to your complaint from the Medical Protection Society (MPS) on behalf of Dr. Hay.

It is now open to you to comment on this response if you wish. If you do, I should be grateful if you would provide me with your written comments by **16 June 2004**. Any response that you make will be forwarded to Dr. Hay and the MPS to allow them a further chance to reply.

I look forward to hearing from you shortly. Please contact me if you have any questions.

Yours sincerely,

GRO-C

Tim Cox-Brown

Caseworker, Fitness to Practise Directorate

Direct Line: 0161 **GRO-C** Fax: 0161 **GRO-C**

E-mail: tcoxbrown@ **GRO-C**

Enc.

Letter from Medical Protection Society to GMC dated 28 May 2004.



MEDICAL PROTECTION SOCIETY

RECEIVED

01 JUN 2004

Direct Line: **GRO-C**
Direct Claims Fax:
Secretary Nicola Oliver (9.00 – 5.30pm)

Mr Tim Cox-Brown
Caseworker
Fitness to Practise Directorate
5th Floor St James's Buildings
79 Oxford Street
Manchester M1 6FQ

Our Ref: CL/GB/540234
Your Ref: TCB/FPD/2004/0781

28th May 2004

BY FAX AND POST – **GRO-C**

Dear Mr Cox-Brown

Re: Dr CRM Hay

I have been instructed by Dr CRM Hay to respond to your letter of 30th April 2004.

It appears that the General Medical Council has received a complaint from Mrs M Murphy in respect of medical treatment received by her husband between December 1991 and his death in September 1994. In a letter to the Council dated 16th March 2004 Mrs Murphy raises allegations of "medical negligence" against Dr Hay in relation to this treatment.

On the basis of these facts alone it is submitted that this case may not be referred to the Preliminary Proceedings Committee, as more than five years have elapsed since the events in question. I refer to Rule 6(7) of the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order of Council 1988 (as amended) which clearly states that:

"An allegation of misconduct in a case relating to conduct may not be referred to the Preliminary Proceedings Committee under this rule if, at the time the complaint was first made to the Council, more than five years had elapsed since the events giving rise to the allegation".

The purpose of the five year rule in conduct cases is understandable - to avoid prejudice to the parties and to ensure fairness in the proceedings. It is recognised that a delay in bringing a case can have a significant detrimental effect on the cogency of the evidence available; there is an inevitable dimming of the memory so that a witness's recollection of events may become less reliable with the passage of time; contemporaneous documentary evidence may be lost or no longer available several years after the event. The intention of the five year rule therefore is ultimately to uphold the integrity of the Council's own investigations and procedures.



INVESTOR IN PEOPLE

In this case the events in question took place over 10 years ago; the case comes firmly within the five year rule and therefore, according to the Order of Council, it may not proceed.

If, contrary to Rule 6(7) this matter were referred to the Preliminary Proceedings Committee it is submitted that Dr Hay's ability to conduct his defence would be severely prejudiced by the delay. When he received the Council's letter Dr Hay called for copies of the patient's hospital records. So far only a few have been produced but having reviewed those documents Dr Hay already suspects that some of the original records have now gone missing or are lost. This is unfortunate but not entirely surprising from a document management perspective. The patient's records were voluminous. He was a haemophiliac who had contracted Hepatitis C; he suffered from numerous medical problems and was under the care of a number of specialists at more than one hospital. The matter is still under investigation but it appears quite possible that a complete set of this patient's hospital records are no longer available, which would obviously prejudice Dr Hay in his defence.

In order to defend this case Dr Hay may also need to interview and obtain evidence from the other practitioners who had responsibility for the patient during the period in question. He will have to overcome firstly the hurdle of trying to locate and identify those practitioners (who may have left the hospitals concerned and moved on). Then he will be prejudiced by the fact that those witnesses' recollection of events will inevitably have faded over the intervening 10-13 years.

As regards his own evidence Dr Hay has some recollection of this patient but freely acknowledges that his memory of events which took place over 10 years ago will not be perfect. It is similarly submitted that the Complainant's recollection of events will have dimmed over time. Sadly, it may also inevitably be the case that Mrs Murphy's memory has been influenced by her husband's subsequent demise and possibly tainted by the "conviction" she now has, that he was the victim of medical negligence.

In the circumstances, I submit that Dr Hay's ability to conduct his defence would be severely prejudiced by the delay in bringing this complaint, and it would be inappropriate and inequitable to allow the matter to proceed.

The medical screener may wish to consider whether there is an argument that this case should proceed to the Preliminary Proceedings Committee on the grounds that "public interest requires this in the exceptional circumstances of the case", pursuant to Rule 6(8). In my submission, no such argument exists in this case. The complaint concerns the management and treatment of one patient only, and concerns specifically:

- Management of the patient's knee replacement operation in December 1991,
- Management of his liver cirrhosis from January 1992,
- Management of a hepatocellular carcinoma diagnosed in 1994.

On any view these matters are private and unique to the patient in question. They do not raise wider matters of public interest. Further, whilst the circumstances of Mr Murphy's death were no doubt sad, they were by no means exceptional.



MEDICAL PROTECTION SOCIETY

In my submission there could be no justification for an exceptional referral of this case to the Preliminary Proceedings Committee under Rule 6(8).

Finally, the screener should take into account the facts that:

- As far as Dr Hay is aware, the Complainant did not pursue a complaint through the hospital complaints procedure at the time,
- The Complainant has already attempted legal action in respect of these events, which failed in the late 1990's.

The statement which Mrs Murphy has provided in support of her complaint to the Council was originally made in 1997 in support of a claim for damages for medical negligence. Dr Hay understands that Mrs Murphy had the benefit of legal advice and assistance in investigating that claim and that an independent expert report was obtained on her behalf. That expert report was never disclosed but it must be presumed that it was unsupportive of the Complainant's case because shortly afterwards the claim was discontinued. In fact formal civil proceedings were never issued.

It is noted that the Complainant has chosen not to share a copy of that independent expert report with the Council, presumably because it does not support her position.

Thus it appears that the Complainant has already had the opportunity fully to explore the issues in this case, and she has the benefit of an independent expert report (which she has not disclosed). Mrs Murphy is now trying to open the same allegations and explore the same issues, through the General Medical Council. It is submitted that this is inappropriate and an unreasonable waste of the Council's time.

Dr Hay would like to make it clear that he firmly refutes all the allegations and criticisms made by the Complainant, and reserves all his rights to provide comments on the substantive issues if this proves necessary. As a preliminary issue however it is submitted that the screener should have regard to the five year rule and properly conclude that no further action can be taken, and this enquiry should be brought to an end.

Yours sincerely

GRO-C

Catherine Longstaff

Solicitor

Claims and Legal Services Division



MEDICAL PROTECTION SOCIETY

Verbatim transcript of letter from the Medical Protection Society to Mr Tim Cox-Brown of the General Medical Council.

Letter dated 28th May 2004.

Received at MPS on 1st June 2004.

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Re: Dr CRM Hay

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The purpose of the five year rule in conduct cases is understandable - to avoid prejudice to the parties and to ensure fairness in the proceedings. It is recognised that a delay in bringing a case can have a significant detrimental effect on the cogency of the evidence available; there is an inevitable dimming of the memory so that a witness's recollection of events may become less reliable with the passage of time; contemporaneous documentary evidence may be lost or no longer available several years after the event. The intention of the five year rule therefore is ultimately to uphold the integrity of the Council's own investigations and procedures.

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(Pg 2)

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Claims and Legal Services Division

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guiding doctors*

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