17 JUL 1989

OXFORDSHIRE HEALTH AUTHORITY

OXFORD HAEMOPHILIA CENTRE

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14th July 1989

Dear Colleague

Extra-ordinary General Meeting of UK Haemophilia Centre Directors to discuss Haemophilia, HIV and Litigation which was held at the Royal Free Hospital, London on Friday 16th June 1989.

Please find enclosed draft minutes of the above meeting. I have also enclosed a copy of them for you to pass on to your legal adviser.

Please let me know if you have any comments by the 31st July 1989.

Kind regards

Yours sincerely

[redacted]

UK Haemophilia Centre
Directors' Organisation

Enc.

DRAFT

Minutes of the Extra-ordinary General Meeting of UK Haemophilia Centre Directors to discuss Haemophilia, HIV and Litigation which was held at the Royal Free Hospital, London on Friday 16th June 1989.

Present: [redacted]

Apologies [redacted]

1 **Introduction**

[redacted] welcomed the participants to the meeting, especially the representatives of the Medical Defence Organizations and Department of Health and the legal advisers from various Health Authorities. [redacted] presented the results of the short questionnaire sent to Haemophilia Centre Directors several weeks before the meeting. This showed that 42 Haemophilia Centres were involved in litigation

and that 214 patients had taken legal action. In all instances action was being taken in the first place against the Health Authority or Health Board (34). In addition action was being taken against the Haemophilia Centre Directors (4 Centres), Scottish National Blood Transfusion Service (3 Centres), Secretaries of State (6 Centres), DHSS (3 Centres), Attorney General (1 Centre), Drug Company (1 Centre), Licensing Authority (1 Centre), CSM (2 Centres). The majority of cases were being handled or co-ordinated by 2 groups of solicitors, Pannone Napier and Keith Park & Co.

[redacted] then presented specimen allegations drawn from his own experience.

a. Factor VIII was supplied which by virtue of its manner and location of manufacture, was known to be substantially more likely to be contaminated with a virus than alternative available sources of the product.

b. Factor VIII was supplied at a time when the risk of contamination with a virus was known or ought to have been known, whereas an alternative product, being cryoprecipitate, which had a substantially reduced probability of contamination, ought to have been provided in its place.

c. Client ought to have been provided with warnings of all of the risks of factor VIII treatment.

d. Client ought to have been notified at an earlier date than he was of the result of the first blood test that revealed a prior exposure to HIV.

e. Also reserve the right to raise other allegations as the investigations into this and related claims proceed.

f. Related claims based on client's infection may be raised in the future by client's wife and children.

2 **History of Progress of HIV in Haemophilia**

[redacted] presented the document which had been pre-circulated outlining the growth of knowledge of HIV infection in haemophiliacs. Before discussing the document [redacted] explained the difference between cryoprecipitate (cryo) and Factor VIII concentrates drawing attention to the fact that cryo is made from individual plasma donations which are then pooled. Using this material patients may receive in a single dose donations from as few as 10 donors. Freeze dried factor VIII concentrate on the other hand is made from a pool of plasma from up to 25,000 donors and because of this carried a greater risk of transmitting viral agents. [redacted] then summarised the historical survey of HIV infection from 1981-85, emphasising the points of importance such as the date of isolation of HIV, date of availability of tests for anti HIV, introduction of heat-treated factor VIII to UK, guidelines sent out to all Directors.

He concluded his presentation by showing a graph illustrating the amount of Factor VIII used by UK Haemophilia Centres in 1969-87 drawing attention to the relative amounts of cryoprecipitate, NHS factor VIII and commercial factor VIII during that period.

3 **Litigation involving children**

[redacted] reviewed briefly the problems seen with litigation involving children. He said that during the last 6-8 weeks cases concerning children who attend his centre has been filed. Only one family had come to discuss the problem with him and they has decided not to go ahead with litigation. [redacted] felt that parents were not sure what was involved with litigation. Families were moving away from seeking counselling by Centre Staff and some parents felt that junior members of staff were changing thier attitudes towards them. This was causing problems for the haemophilia centre staff and for the families who need more, not less, support from the Centre.

4 **Litigation and its implications for the doctor**

[redacted] said that the patients' claims relate to negligence and were therefore claims for compensation. There was at present no "no-fault compensation" scheme and there seemed little hope of such a scheme in the near future. The main points to bear in mind were:

1. Plaintiff should take advice from a Solicitor

2. Doctor should get advice from Health Authority Legal Advisers and from Defence Organizations on how to proceed in early stages.

3. Solicitors will ask for the patient's records. Every attempt should be made to meet this request. There is nothing to be gained by refusing to disclose records. All medical records must be disclosed and it is advisable to arrange for copies to be made. The original should not be sent to the patient's solicitor. Doctors should collaborate closely with their hospital legal advisers and their Medical Defence Organisation sending them copies of all correspondence received from the patient's solicitors.

4. The patient's solicitor will seek expert advice on the records and [redacted] was of the opinion that the Haemophilia Centre Directors should be prepared to take on this role if asked as they were the experts on the treatment of haemophilia in this country. If the Directors did not agree to act as experts the plantiff's solicitor would have to seek expert advice from outside the Directors' group. This would be undesirable and not in the best interests of any one. The expert would be required to review the records critically and objectively and give an honest opinion. The Defence Organizations would give advice on preparing expert reports. If the defendant was practising in an up to date fashion and in accordance the current medical practice he had little to fear.

5. **The Scottish Position**

This was presented by [redacted] of the Central Legal Service for the NHS in Scotland. There were 12 cases involving haemophiliacs in Scotland; 2 with AIDS, one now dead. The majority of the patients were applying for Legal Aid; Medical expert opinions were being sought. All 12 cases give the same grounds of fault. The defendents were the Health Board and the Scottish National Blood Transfusion Service (SNBTS) all the patients were sueing for £1 1/4 million. Very detailed defenses had been lodged to some of the claims. Allegations against the physicians were that they should have known about HIV at the beginning of 1984 and should have treated the patients with blood or cryoprecipate instead of freeze-dried concentrates also they should have warned the patients of the risk. The SNBTS should have known about the virus and not manufactured concentrate containing the virus. The defendants would say that they could not have been aware of the virus risk until mid-1984. It was a matter for medical judgement whether patients should have been told of the risk of infection. One patient was allergic to cryoprecipate and therefore was treated with concentrate. In 1985 the SNBTS replaced all concentrates with heat-treated material and was at the forefront in the endeavours to find safe material.

6. **Panel Discussion**

A panel composed of [redacted] and [redacted] answered questions from the floor.

i) Should Social Workers' records be disclosed?

[redacted] said he didn't disclose these records and a solicitor agreed it was not necessary for these to be disclosed. [redacted] said that social work records gave very important evidence regarding counselling etc and he felt it was not right to exclude them. [redacted] agreed that all the records should be passed to the solicitors.

ii) Should nursing records be disclosed?

[redacted] said that nursing records were part of the patient's medical records and should be made available.

[redacted] presented a slide summarising the information Plantiff's Solicitors were asking for this consisted of copies of all patient medical records including:

All test results

Clinical notes

Nursing Kardex

Correspondence

A complete list of factor VIII supplied with names of suppliers.

Dates of all blood samples held by directors or, to Directors knowledge, by others.

Results of all retrospective tests on stored samples.

Dates of first positive and last negative blood tests with date of taking the sample in former case.

[redacted] said it was best to give all the information in the first place and not in piece-meal fashion.

iii) Why were the Health Authorities and Doctors being sued and not the Blood Transfusion Service and the Fractionation Centres?

[redacted] said that no case against a drug company has succeeded in the USA so far. As none of the US companies were insured there was little to be gained financially by suing them. The patients were aiming their charge against the Secretary of State and not the doctors.

[redacted] pointed out that in most cases it was not possible to identify a single manufacturer as most patients had received material from several companies during the relevant period.

iv) Acting as an expert witness involved a lot of time for busy people. Should Haemophilia Centre Directors undertake this task?

[redacted] said that the Directors should do this job if asked. They should be as objective as possible and should not feel guilty about not finding faults. There was no limit to the number of opinions which may be sought. Mr Justice Ognall was due to hear the relevant facts on 29th June, in Reading and to draw-up a time-table for action.

v) What was the legal position was concerning the use of unlicensed materials (NHS factors) when licensed products (US Concentrates) were available .

[redacted] This was difficult to answer but presumably the NHS products was not considered to be less safe than US Concentrate.

vi) In view of the great deal of work required in preparing reports was it necessary for so many Directors to be involved in so many cases. Was there any chance of 1 or 2 cases being taken to court to obtain a judgement?

[redacted]

[redacted] said one couldn't assume all cases were similar. For example there might well be cases where there had been some degree of mismanagement e.g. a mildly-affected patient treated in 1986 with non heat-treated material.

vii) **The Haemophilia Society seemed to be strongley supporting their members taking action. Should the Haemophilia Centre Directors expect all members of the Society to sue?**

[redacted] said she understood that the Haemophilia Society wanted to press the Government to provide compensation. The Society did not want to sue doctors.

viii) **The first indication of a case was when the Health Authority asked for the patient's notes at the same time as the Medical Defence Union asked for a report. It was very difficult to deal with the two requests at the same time.**

[redacted] said that this high lighted what she had said earlier namely that Directors should not send their original notes when a request was made for access to medical records.

ix) **The question of the level of support Directors would get from their Health Authorities to help them cope with the paper work was raised.**

[redacted] said he had the offer of extra secretarial help but had had some problems over this. [redacted] thought it was the Health Authority's problem and that they should do the photocopying. [redacted] said that he had asked for and was granted time off work to prepare his various reports.

x) One or two people had raised the question of continuing to treat patients who were sueing them.

[redacted]

[redacted] said that he asked his patients in front of a witness if they wished still to be treated by him and made a note of the conversations in the patient's file. [redacted] thought it was a good idea to do as [redacted] did.

xi) The work caused by the Litigation cases was costing too much time and money. Should the Haemophilia Centre Directors refuse to act as expert opinions? Would this help?

It was unanimously agreed by the panel that it would not be helpful for the Directors to refuse to give opinions.

xii) Could there be a group of Haemophilia Centre Directors looking at the problems and learning from it? Litigation is sterile - the Directors needed to spend time on more profitable matters, for example research work into HIV and AIDS in haemophilia.

xiii) **Should the Directors put pressure on the Government to provide compensation.**

[redacted] agreed that the Directors should do this and should draw attention to the great amount of extra work generated by litigation and how this extra work was detracting from patient care.

xiv) **To what extent were the Health Authority Solicitors in England and Wales collaborating and were the defence organisations co-ordinating?**

[redacted] said there was a limit to the amount of co-ordination that was possible.

[redacted] said there were very many similarities between cases. It would be a waste of time if they didn't collaborate. It was pointed out that someone at the Department of Health was monitoring the situation nationally. [redacted]

xv) [redacted] **suggested that a small group of Haemophilia Centre Directors, Health Authority advisors and representatives of the defence organisations should meet to co-ordinate response to the litigation cases. This was agreed in principle, the details would need to be worked out.**

[redacted] thanked the representatives of the medical defence

organizations and the Health Authority legal advisers for coming to the meeting and [redacted] for providing facilities for the meeting.

The meeting closed at 4.45 pm