

A lamentable situation

Barbara Hewson believes patient safety should override all other considerations

The inquest into the death of David Gray, who died in February last year after a visiting locum GP, Dr Ubani, gave him a lethal overdose of Diamorphine, attracted national publicity. William Morris, the coroner for North and East Cambridgeshire, sat without a jury and did not mince words in his summing up last month.

According to expert evidence given to the coroner, Dr Ubani had administered a dose ten times higher than the appropriate dose for Mr Gray's condition (renal colic). The coroner said: "It is clear to me that Dr Ubani in his dealings with patients over that fateful weekend was incompetent. And he went on: "How was it that a doctor, who did not obtain his qualifications in this country, whose

mutual recognition of their diplomas, certificates and other evidence of formal qualifications. Article 20(3) of that Directive says: "Member States shall see to it that, where appropriate, the persons concerned acquire, in their interest and in that of their patients, the linguistic knowledge necessary to the exercise of their profession in the host country." This suggests that member states were not only expected, but obliged, to ensure some form of language assessment of migrant doctors.

To practise as an NHS GP in England and Wales, it is necessary for a doctor first to be admitted to a Primary Care Trust's (PCT) Performers List. Regulation 6(2)(b) of the National Health Service (Performers Lists) Regulations 2004 provides that a

in the host Member State." Should this make any difference to the obligation on member states to ensure that migrant doctors have the necessary fluency in the language of their host state?

After the inquest, the GMC's chief executive was quoted as saying: "We have taken advice from leading counsel and it is absolutely clear that in general, European applicants may not be required to undertake a language test. This is absolutely the case for doctors who hold European primary medical qualifications. The combination of EU law and domestic legislation (the Medical Act 1983) effectively excludes testing of a European applicant's language proficiency."

“The ability to communicate effectively with patients is integral to the practice of medicine”

first language was not English, who was probably fatigued, who had received a less than adequate induction...came to be treating patients in Cambridgeshire, and treating at least some of them incompetently? How was this lamentable situation reached?"

He found that Dr Ubani, who had flown into England for the first time only the day before, committed a "gross error." He concluded: "This was gross negligence manslaughter." His verdict was that David Gray was unlawfully killed. The coroner made 13 recommendations under R 43 of the Coroners Rules 1984, which is headed, "Prevention of Similar Fatalities".

Free movement

The problem, which the coroner approached as one of systems failure, had its origins in EU law on free movement, particularly Directive 93/16/EEC. This was intended to facilitate the free movement of doctors and the

Trust must refuse an applicant if "it is not satisfied he has the knowledge of English which, in his own interests or those of his patients, is necessary in performing the services, which those included in the relevant performers list perform, in its area". This wording reflects Art 20(3) of the 1993 Directive.

Dr Ubani had been admitted to Cornwall & Isles of Scilly PCT's Performers' List in 2007, having previously withdrawn an application to Leeds PCT, after he failed a language test which it required. Cornwall (by contrast) did not impose any language requirements on Dr Ubani.

The 1993 Directive was repealed by Directive 2005/36/EEC on the recognition of professional qualifications. Article 53 of the 2005 Directive provides: "Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession

Rationale

The rationale for this is not immediately obvious. Assuming that the principle of free movement is protected by the concept of non-discrimination, nevertheless language-testing should not be seen as inherently suspect or discriminatory. The ability to communicate effectively with patients, and with others in the professional team, is integral to the practice of medicine. Either a migrant doctor should be able to demonstrate, by the production of some appropriate diploma or other qualification, that she or he has the necessary languages required by Art 53, or else some form of testing should be imposed. It seems incongruous that emanations of the state, such as PCTs, are required to be satisfied of a doctor's linguistic proficiency before admitting him to performers' lists, but the GMC is precluded from doing so. NLJ

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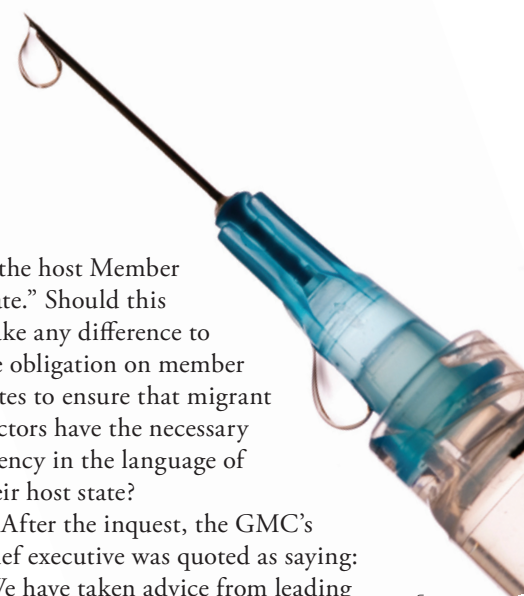


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