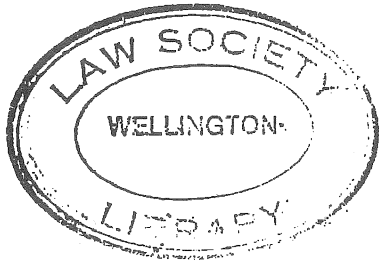


3961

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

S.27/94



THE QUEEN v. J.

B'

Charge: Manslaughter
Plea: Guilty
Counsel: A.G.W. Webb for Crown
D.B. Collins for Prisoner
Sentence: 6 May 1994

SENTENCE OF GALLEN J.

Prisoner at the Bar:

Bi, your counsel has referred to the law in New Zealand. I must administer that as it stands. This case results from the tragic death of a patient in hospital who was largely at the time under your care. You have admitted to re-setting the particular drip at the same rate as the antibiotic drip, believing that you were in fact administering the antibiotic drip and to ensure that the rate ordered was actually met. I accept that you yourself discovered what occurred, that you made attempts to resuscitate the patient and that distressingly that could not be achieved. Nevertheless as counsel for the Crown has pointed out, there was a difference in the apparatus and that is something that you ought as a competent professional, to have picked up.

I have read with care the victim impact report in this case which your counsel has referred to and which you have no doubt seen yourself. I note as I expect you have too, the serious and continuing

consequences that the loss of this member of the family has had and the concern which they have expressed. I say also, that that distress and concern is expressed with a considerable degree of dignity.

I accept that in this case your own reaction has been what one would expect from a conscientious and competent nurse. I accept that your distress has been deep and real and that is confirmed of course by those who know you and have had an opportunity to see your reaction to this matter.

The reports which were made available to me and which I do not go through in detail, indicate as your counsel has said, that you had been under great personal stress at the time and that this had had an effect on your ability to cope with your work. That seems to have been confirmed by the medical report which has been referred to me. It may too have affected your alertness at the particular time. I note also that because of the particular shift which you were working, that may have had some affect on your adjustment to the times which you were working when this occurred.

It is clear that this was a genuine mistake. Nevertheless of course it was one which should have been picked up and avoided. This was and can properly be described as a single incident. It is not indicative of a course of conduct or an unsatisfactory attitude towards your work. It may properly be distinguished from situations where a whole course of conduct is under consideration or where there has been a number of incidents. This was one single disastrous lapse. I accept too that you are well regarded as a conscientious and caring nurse, well qualified in your occupation. I have received references which confirm that.

Manslaughter charges carry penalties which vary from release and discharge, through to life imprisonment. Counsel has properly referred to the three other cases which have been recorded where people faced a charge such as that which you face. There is I think some distinction in the nature of the responsibilities which those charges represent and those which you carried. In one of those cases where there was a failure to respond to concern which was expressed by

other health professionals, the person concerned was fined. In the other cases, they were convicted and discharged.

It is important to note that the public is entitled to the protection of sanctions which reinforce the responsibilities of people in your position, but it is also important that the penalties which are imposed in cases of this kind, reflect the circumstances of the individual case and bear some relationship, the one to the other. It seems to me that the charge you face and to which you have pleaded, is very similar in nature to two of the cases which have been drawn to my attention.

Having regard to those circumstances, I propose to impose a similar penalty and in respect of this charge as the other persons who have been before the Court were, you will be convicted and discharged.

I do not think it is appropriate that I should accede to your counsel's first request that you should be dealt with without conviction. That was not considered appropriate in the other cases and I think that you ought to be dealt with on the same basis.

As counsel for the Crown has said, the question of reparation would have arisen. I accept the undertaking which has been given by your counsel to meet the expenses which are referred to in the victim impact report and therefore there is no need to make such an order.

In terms of that conclusion therefore you are convicted and discharged.

Your counsel has asked that I continue the order for suppression of your name. I understand and appreciate the concern which you have as to this aspect of the matter and he bases his application substantially on the material contained in the medical reports which I have read with care. I think in this case I am bound really to accept the same approach which was adopted in the other cases. In none of the other cases was the name suppressed and I think that there is not really sufficient to justify a distinction in your case.

There is however a further consideration which I am bound to take into account. There must be some knowledge of the circumstances under which this occurred and because of the nature of your occupation, it may be that other persons come under suspicion and involvement. That is the basic reason why cases of this kind do not normally involve a suppression of name and I regret that having regard to those reasons, I do not feel in a position to continue the suppression. It will not be continued.

However although no request has been made for it, the name of the deceased and his family must continue to be suppressed.

2/11/11
