



## Medical responsibility at inquests

**To the Editor:** One of the duties of a forensic pathologist is to give expert testimony during an inquest or trial regarding the cause of death and/or the mechanism of death. At an inquest, nobody is on trial; its purpose is to elucidate to the inquest magistrate who the deceased is; where, when, why and how the death occurred; and whether or not someone may be held responsible by virtue of an act of commission or omission.

When patient management is the issue at stake, doctor(s), nurse(s) and even the hospital involved often have excellent legal representation. The Medical Protection Society (MPS) legal team consists of well-prepared, experienced lawyers. They have access to medical records and specialists in different fields of medicine who are paid well to give expert testimony and assist the MPS in defending their clients.

In contrast, the inquest prosecutor is often inexperienced, has poor insight into the important medical issues involved, and is unprepared.

Since the inquest is not a trial but an 'inquiry', the inquest magistrate must hear testimony from all sides and is only then able to give an objective ruling. The court case *Castell v. de Greef* set a precedent by which the code of conduct of a doctor is evaluated – '... the conduct of a doctor in both medical diagnosis and treatment should be tested against the standard of the reasonable doctor faced with the same problem'.<sup>1</sup>

A forensic pathologist performing an autopsy, where the possibility of negligence on the part of a health care worker(s)



exists, is expected to determine a cause for death, review hospital records and statements from medical personnel concerning treatment, and recommend whether or not an open inquest should be held. When recommending an open inquest, a frustrating and discouraging aspect is finding medical personnel who are willing to give expert testimony in their specialty at an inquest on behalf of the inquest prosecutor and also to act as assessors.

If health care workers are unwilling to assist, the forensic pathologist is often the sole witness to give the prosecutor necessary insight. Pathologists are unable to, and at times even prohibited from, expressing opinions on matters outside their expertise, e.g. radiology, obstetrics, surgery, pharmacology, etc. Given these constraints, how effectively can medical inquest cases be evaluated by magistrates?

Court proceedings are generally unpleasant for health care workers. However, does the medical profession not have an ethical responsibility to assist the court, given that the standard by which conduct is tested at an inquest is based on what the reasonable doctor would do?

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1. Thomas R. Where to from Castell v. De Greef? Lessons from recent developments in South Africa and abroad regarding consent to treatment and the standard for disclosure. *S Afr Law J* 2007; 124: 188-215.