South African doctors arrested in kidney sale scandal

Pat Sidley *Johannesburg*

Five doctors, some of them from top academic institutions, were arrested and appeared in court on 16 August in connection with charges under South Africa's laws intended to stop illegal trading in human organs.

The charges have not yet formally been put to the doctors, but the warrants of arrest that were served on them indicate that they face potential charges of fraud and assault and separate charges under the Human Tissue Act. The five doctors were released on bail.

A representative of the South African police, Bala Naidoo, confirmed police cooperation with other countries and said that the Brazilian police have secured convictions in relation to the same transplantation scheme under their own national laws.

He confirmed that charges have not yet been drawn up but that the area of investigation concerned a scheme of kidney transplantation that took place in South Africa and involved recipients and donors from Israel and Brazil.

John Robbs, head of surgery at the Nelson R Mandela School of Medicine at the Uni-

versity of KwaZulu-Natal, and his deputy, Arif Haffajee, are among the doctors who were alleged to have participated in a scheme in which Israeli people who needed kidneys received them in South African hospitals. The kidneys were mostly from Brazilian donors.

The other doctors facing charges are Neil Christopher, Mahadev Naidoo, and Kapil Satyapal.

The lawyer Gillian Williams, who represents all of the doctors except Professor Haffajee, said they are innocent of all charges and are defending the action.

Professor Haffajee is separately represented and is, said his lawyer, J P Van der Veen, also innocent.

Netcare, one of South Africa's largest groups of private hospitals, accepts that the operations took place mostly in St Augustine's Hospital in Durban, a member of the group.

Netcare is not being charged with any offences, but it says it believes that it may be called by the state to give evidence. Its group chief executive officer, Richard Friedland, said in a statement that it views itself as a

"victim of wrongdoing" and will give evidence in the case if called to do so.

In February another group of doctors were among several people who appeared in court in connection with performing unlawful transplantations. The doctors concerned still face charges, as do two employees of Netcare (*BMJ* 2004;329:190).

For transplantations between a living donor and recipient to take place legally in South Africa the donor and recipient should be related and money should not change hands.

The case has been widely reported in South Africa and abroad as part of a well known international trade in kidneys.

The first arrests were made in January 2003. South Africa's justice system is notoriously slow, and despite cooperation between South African, Israeli, and Brazilian police the formal charges in this latest development in the investigation are expected to be put only on 16 September, when the next hearing will take place. No evidence is expected to be heard on that date, said Ms Williams.

The Health Professions Council of South Africa, the statutory regulator of healthcare professionals in the country, will look at the case only after the criminal prosecution has finished, said a spokesman for the council. □

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Arif Haffajee (left) deputy head of surgery at the Nelson R Mandela School of Medicine at the University of KwaZulu-Natal, and John Robbs, head of surgery, are among the doctors arrested

Dutch murder case leads to talks with attorney general

Tony Sheldon *Utrecht*

Talks have begun this week between the Dutch Medical Association and the country's attorney general after the collapse in July of a murder case against a Dutch hospital doctor who gave palliative care to a dying patient.

Doctors reacted with alarm after it emerged that the doctor, Peter Vencken, had spent nine days in custody before being charged with murder after prescribing morphine and the sedative midazolam to a terminally ill patient.

Dr Vencken, a trainee anaesthetist, was on duty as casualty

doctor when he treated a 77 year old man who had had a large cerebral stroke. In agreement with the family he gave only palliative care.

The man was given 5 mg of morphine an hour, but after he had serious breathing difficulties the dose was increased to 20 mg. Later, as his condition worsened, he was given 5 mg of midazolam. He died soon afterwards.

Both the ministers of health and justice had previously defined "terminal sedation," in which pain relief may be used to induce a coma in a dying patient, as "normal medical treatment." Such sedation is estimated to be involved in about 10 000 deaths in the Netherlands each year (*BMJ* 2003;327:465).

However, the public prosecution service took the Vencken case to appeal "to be clear where the border lies in the grey area between euthanasia

and palliative pain relief."

Last November a court in Breda acquitted the 32 year old doctor. It accepted expert evidence that the nature, quantities, and combination of morphine and sedative were not excessive, complied with policy on palliative pain relief, and constituted normal medical treatment. It rejected the prosecution's claim that Dr Vencken intended to accelerate the patient's death, arguing that although the drugs could shorten the patient's life, this had not been the intention (*BMJ* 2004;329:1206).

The public prosecution service then appealed, but on 29 July the appeal court in Den Bosch returned a verdict in two hours instead of the usual 14 days, dismissing the charges and adding that the prosecution had failed to prove that the drugs caused the death.

The coordinator of legal

policy at the Dutch Medical Association, Johan Legemaate, said the decision indicated that the judges considered the case pointless and could be seen as a reprimand. Dr Vencken's lawyer, Kees Korvinus, has described the prosecution as "absurd" and intends to claim damages in the region of €100 000 (£68 000; \$123 000). Throughout the case Dr Vencken has continued working.

No further appeal has been made. The association has invited the chairman of the board of public prosecutors, Harm Brouwer, to discuss the decision to prosecute. Professor Legemaate said many doctors were concerned that patients could suffer if doctors were reluctant to use morphine for palliative care. The association felt that a criminal prosecution hadn't been exercised carefully and hoped for "some statement to repair the trust between the legal and medical professions." □