Coroners Act, 1996
[Section 26(1)]

Western ***Australia***

RECORD OF INVESTIGATION INTO DEATH

Ref No: 17/10

I, Alastair Neil Hope, State Coroner, having investigated the death of ***Penelope Dingle (nee Brown)****, with an Inquest held at Perth Coroners Court on 9-24 June 2010 find that the identity of the deceased person was* ***Penelope Dingle (nee Brown)*** *and that death occurred on 25 August 2005 at Paulls Valley Road, Kalamunda, Western Australia as a result of complications of metastatic rectal cancer in the following circumstances -*

Counsel Appearing :

Dr Celia Kemp and **Sergeant Lyle Housiaux** appearing as counsel assisting
Mr Anthony Eyers (instructed by Ms Finola Barr, Meredith & Co and Natalia Brown) appearing on behalf of the deceased's family
Mr Mendalough (instructed by Mr Thunderbolt Jackson McDonald) appearing on behalf of Francine Scrayen
Ms Melanie Naylor (Tottle Partners) appearing on behalf of Professor Cameron Platell
Mr Denis Barich (Fiocco's Lawyers) appearing on behalf of Dr William Barnes
Mr Jeremy Allanson appearing on behalf of Dr Peter Dingle
Mr John Ley (Panetta McGrath Lawyers) appearing on behalf of Dr Igor Tabrizian

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INTRODUCTION

Penelope Dingle (nee Brown) (the deceased) died from complications of metastatic rectal cancer on 25 August 2005. The death was not initially reported to a coroner, but in 2007 the surviving siblings of the deceased contacted the Coroner's Court asking for the circumstances of the death to be investigated and submitting that a public inquest should be held. In support of this application the siblings of the deceased provided a considerable amount of materials including diaries and copies of draft letters prepared by the deceased prior to her death which described the events leading up to her death in considerable detail.

A determination was made that the death should be treated as a reportable death and this inquest was held in order to examine the circumstances surrounding the death.

In support of the application made by the siblings of the deceased it was contended that the deceased had been influenced in choices which she made by a homeopath whose name was Francine Scrayen and that homeopath had become her primary health adviser at a crucial period in the development of her disease.

It was contended that the homeopath was aware that the deceased had been suffering rectal bleeding for approximately 12 months before any recommendation was

made to the effect that she should be referred to a medical practitioner.

It was further contended that the homeopath had assured the deceased that she could cure rectal cancer using homeopathic methods alone and that the deceased would not require surgery, chemotherapy or radiation treatment. It was suggested that it was on the basis of this advice that the deceased had not pursued a surgical option offered by Professor Cameron Platell in February 2003.

A further contention of the family and the deceased in her diaries was to the effect that in spite of her increasing pain levels the homeopath repeatedly assured her that the treatment was effective (curative) and encouraged her to persist with homeopathic treatment. Further it was contented that the homeopath had encouraged the deceased not to take appropriate pain relief on the basis that relevant medications would interfere with her monitoring of the disease and the effectiveness of the homeopathic treatment.

The contentions of the siblings of the deceased included a claim that in a telephone call with the deceased while she was at the Emergency Department at Fremantle Hospital being treated on 12 October 2003, the homeopath had tried to dissuade her from having emergency surgery for a complete bowel obstruction in circumstances where

unless surgery had been performed she would have died within the next 24 hours.

It was claimed that it was only as a result of a graphic description of the circumstances in which the deceased would die within hours given by the registrar at the hospital which caused the deceased to finally agree to surgery in spite of the advice of the homeopath. Unfortunately the cancer by that time spread to her liver, lungs and bones and treatment from time onwards was effectively palliative.

In other words, it was the contention of the siblings of the deceased that the deceased made a number of unfortunate decisions based on misleading and erroneous information and advice provided to her by a homeopath and those decisions ultimately resulted in her premature death.

This inquest was held in order to explore a number of contentions made by the family of the deceased in circumstances where it appeared clear from a review of the deceased's diaries and objective evidence that the deceased experienced unnecessary and extremely serious pain over an extended period in 2003 and recommendations for surgery and other appropriate treatment made by mainstream medical practitioners were rejected. In the context of the events which surrounded the death, it was also necessary to review the involvement of the partner and later husband of the deceased who was with her over the

period during which her cancer spread and ultimately resulted in her death, Dr Peter Dingle.

THE INVOLVEMENT OF THE DECEASED'S USUAL GENERAL PRACTITIONERS AND SURGEON, PROFESSOR CAMERON PLATELL

The deceased had been attending the East Fremantle Medical Centre from 5 August 1999, initially because she wished to have a baby and was discussing fertility issues. On 29 September 1999 she was seen at a follow up visit with her husband, Dr Dingle, and again fertility issues were discussed. Notes prepared by Dr Hillary Fine at the practice covered discussing naturopath visits and other matters. Dr Fine recalled that Dr Dingle was a strong proponent of natural treatment and was a lecturer at Murdoch University for environmental sciences (toxicology). She asked Dr Fine to listen to tapes which he produced.

The deceased attended the practice on five further occasions between November 2000 and December 2001.

On 5 December 2002 she saw Dr Kath Fordham and reported to her that she had rectal bleeding. Dr Fordham referred her to Fremantle Hospital for a colonoscopy to investigate this.

On 31 December 2002 the deceased again saw Dr Fine, this time she reported increasing lower abdominal

and pelvic pain. She was referred for a pelvic ultrasound scan and a colonoscopy referral was discussed.

On 25 February 2003 she had a colonoscopy which confirmed a rectal tumour. She was referred to Professor Cameron Platell by Dr Trevor Claridge on 27 February 2003. The referral letter advised that she had undergone a colonoscopy to investigate rectal bleeding. She was identified as having a large rectal mass.

It is clear from the above that while the deceased may have been receptive to alternative approaches to medicine, she was not ideologically opposed to mainstream medicine.

Professor Platell was, and is a colorectal surgeon. Professor Platell had graduated from the Medical School of the University of Western Australia 1984 and had obtained a PhD in medicine from that university in 1991. He had been a Fellow of the Royal Australian College of Surgeons since 1993. He had been practising as a colorectal surgeon since 1986 and had been a Professor of Surgery at the University of Western Australia since 2007 and in 2009 became a Winthrop Professor of Surgery at that University. In 2006 he was appointed Director of the Colorectal Cancer Clinical Research Unit at St John of God Hospital Subiaco and in 2007 he was appointed Scientific Director of the Bendat Cancer Centre, St John of God Hospital, Subiaco.

It is clear from the diary entries of the deceased that she had some involvement in selecting Professor Platell as her surgeon and that from their first meeting she held him in very high regard. In a document headed "Here is My Story"[1] the deceased wrote that she "researched who the best surgeon was" and found out that it was Professor Platell. She said the next day she and Dr Dingle sat in his office and discussed the possibility of an operation. She stated that she liked Professor Platell immediately and that he was very honest about surgical side effects etc.

Professor Platell examined the deceased on 27 February 2003 and discussed with her the findings of the colonoscopy and biopsy. On digital rectum examination he could feel a bulky but mobile rectal tumour. He advised the deceased that she would need to have more investigations performed to obtain a more accurate idea of the stage of her cancer. He advised her that if the cancer was localised to just the rectal area she should have a course of adjuvant pre-operative chemo radiotherapy, followed by surgery to remove the cancer and reconstruct the bowel.

The adjuvant pre-operative chemotherapy was to be used in an effort to try to reduce the tumour in order to obtain better survival outcomes.

[1] Index 28 to Volume 1

Professor Platell explained in evidence that the procedure involved was technically complex which explained the need to have colorectal specialists. He further explained that the deceased would have required a temporary stoma. The use of a stoma is intended to reduce risk of infection and involves bringing up some of the intestine to the abdominal wall so that effluent can be discharged through a stoma through a bag rather than travelling through the anal area.

Professor Platell was of the view that the deceased was relatively young but was suffering from a serious and life threatening disease.

At the time of his initial diagnosis Professor Platell considered that the cancer had already gone through the bowel wall, although clinically it was difficult to determine whether it had metastised.

Given the history that the deceased had been experiencing bleeding in the rectal area and blood stained stools for approximately two years, he believed that this symptom was consistent with the cancer having developed over a period of approximately two years.

During the discussion the deceased raised concerns about the possibility of her being able to have children and Professor Platell explained that the pre-operative

chemotherapy and radiotherapy would essentially make it impossible for her to have children and that it would be necessary to weigh up the best possibility of surviving as opposed to the alternative of not having such good treatment but having the possibility of later having a baby. In Professor Platell's view these were important issues to the deceased at the time.

At the conclusion of that appointment Professor Platell wrote to Dr Claridge explaining the situation and advising that he had organised for her to have a CT scan and would review her again in one week with the results of that scan.

An appointment was made for the deceased to see Professor Platell on 6 March 2003 but she did not keep that appointment. Professor Platell managed to contact the deceased by telephone and she advised him that she was still thinking about her options and said that she would contact him when she felt that she wanted to consider having an operation. On 6 March 2003 Professor Platell advised Dr Claridge of the situation.

The deceased next attended the clinic and saw Professor Platell on 10 April 2003. On that occasion he discussed her diagnosis and she advised that she did not wish to have any adjuvant chemo radiotherapy and that she would possibly consider having surgery to treat her cancer. She also stated that she had decided that she did not want

to have a CT scan and that she would prefer to have an MRI scan.

That day Professor Platell wrote to Dr Claridge advising him of the situation, the letter contained the following paragraph –

> I have advised Penelope that I think she should have the operation done as soon as possible and to consider trialing these adjuvant therapies after her surgery. I have also advised her that I think she needs a CT scan. Penelope and her husband have decided that they would rather have an MRI scan which is near impossible for me to organise through the public hospital system on an urgent basis. They will, therefore, look at having this done privately at Murdoch and I wonder if you would be able to organise this for them.

On 30 April 2003 Professor Platell received a facsimile transmission from the deceased which attached a letter from her then partner, Dr Dingle, requesting that she be referred for an MRI scan instead of a CT scan. That letter was written by Dr Dingle under Murdoch University letterhead and described him as "Environmental Toxicologist", it contained the following paragraph –

> Due to the patient's history of adverse reactions to a wide range of synthetic chemicals and radioactive substances, it is my recommendation that a CAT scan not be undertaken, and that for this individual an MRI is a suitable and safe substitute.

On 1 May 2003 Professor Platell made a referral for the deceased to Dr James Black at SKG Radiology for an MRI scan to assess her rectal tumour. On 14 May 2003 Professor Platell reviewed the deceased following her MRI scan. The scan showed that her rectal cancer seemed to be reasonably well contained within the pelvis, with clear

plains between the tumour and the adjacent cervix and the vagina. At that stage Professor Platell believed that the MRI did not clearly demonstrate a metastatic pattern and there was, for example, no tumour spread to the liver. There was a chance that she could have had metastatic spread and that the cancer had spread to the right ovary, which was enlarged, causing cystic changes in the ovary, although even if this had occurred, he observed that isolated metastatic deposits in the ovary would not preclude a person from being cured from their disease.

Professor Platell stated that his approach was that he would "give the patient the benefit of the doubt and look at a curative approach to their management"[2].

Following that appointment Professor Platell lost contact with the deceased who failed to attend any of the outpatient appointments he made for her.

When it became clear that the deceased was determined to refuse chemotherapy, radiation therapy and surgery, he contacted a senior stoma nurse, Pam Thompson, and asked her to get in contact with the deceased to discuss her refusal of treatment.

[2] t.356

It is clear that Professor Platell had emphasised to the deceased that she should have the surgery performed as soon as possible and in a letter dated 14 May 2003 addressed to Dr Claridge he explained the situation in the following terms –

> Mrs Brown recently had an MRI scan which showed that her rectal cancer still seems reasonably well contained with clear plains between the tumour and cervix and vagina. I have strongly impressed on Penelope that she should have surgery performed as soon as possible, but for reasons which I do not understand she is delaying having the procedure performed. I discussed this with both her and her husband but again she is making her own decision about when it is appropriate to have surgery.

It is clear that Professor Platell was deeply concerned about the failure of the deceased to take appropriate steps to have surgery. He explained in evidence that the natural history of rectal cancer is grim and that the cancer would be likely to keep growing and start invading adjacent organs. He explained that the pelvis is a narrow canal so the cancer easily invades structures such as cervix, vagina, uterus and sacral bone. He stated that this growth would be associated with severe pain and if untreated would result in death. He explained that this would be a "horrific way to go"[3].

Nurse Thompson attempted to contact the deceased on a number of occasions without success until in June 2003 she contacted her by telephone. Outpatient Notes of Fremantle Hospital record that on that occasion the

[3] t.358

deceased was "fully informed" of the need for treatment and the options of treatment for rectal cancer. It was further recorded that the deceased and her partner were spoken to at length and they would contact Nurse Thompson on the next week to discuss the matter further. The notes record that the deceased had decided, however, to try alternative medicine rather than "conventional".

In respect of the reference to the patient and her partner being spoken to at length in the Outpatient Notes, Nurse Thompson explained in her evidence that she could hear discussions going on between the deceased and Dr Dingle while she was talking to them.

Nurse Thompson attempted to contact the deceased on 23 June and 30 June 2003 without success, on 1 July 2003 the deceased and Dr Dingle came in to see Nurse Thompson at her office and were provided with documentation containing statistical information relating to colorectal cancer treatments and outcomes.

At that meeting the deceased continued to refuse medical intervention and stated that she had decided to go for "alternative medicine". She said the statistics could be "manipulated either way" and that there where "good statistics to show that natural therapies also assisted with management of colorectal cancer"[4].

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[4] t.397

This was important evidence and it revealed that the deceased had been influenced by misinformation and bad science in coming to her decision. The expert evidence at the inquest demonstrated conclusively that medical intervention was urgently needed.

When Professor Platell's letter of 14 May 2003 advising that the deceased was, delaying having the procedure performed was received at the East Fremantle Medical Centre, immediate efforts were made to attempt to pursue the matter with the deceased.

The arranging of an appointment was marked on the file as being "very important" and unsuccessful attempts were made to contact the deceased on 27 May, 29 May and 30 May 2003 until on 31 May 2003 the office receptionist spoke to the deceased who advised that her mother had passed away and that she would call and make an appointment for the week starting 9 June 2003.

The deceased did not make an appointment for that week and further efforts were made to contact her, this time by Dr Claridge. After a number of attempts to contact the deceased by telephone were made without success, Dr Claridge sent the deceased a letter dated 4 August 2003 in which he wrote –

> I am writing because of my concern for your health. I have not received any correspondence to inform me that you have had any treatment of your cancer. If you have had surgical treatment please could you let me know and I will pass this on to Dr Platell.

On 12 August 2003 Dr Claridge contacted Dr Dingle at his work by telephone and was advised that they had changed their address and contact telephone number.

Following Dr Claridge's letter of 4 August 2003 the deceased contacted him by telephone on 18 August 2003 and advised that at that stage she was finding it hard to travel, but had received his letter requesting a consultation.

In the history section of his patient progress notes Dr Claridge recorded that the deceased advised him that she had decided to try to treat her condition with supplements and homeopath treatments.

In the treatment column of the same notes Dr Claridge recorded that he was advised that the deceased was seeing Dr William Barnes and had decided to put her treatment trust with Dr Tabrizian.

Dr Claridge advised the deceased to monitor her condition and suggested ways she could do so. His notes record that he emphasised with her that he was there to assist her and discuss the possibility of follow-up with blood tumour markers.

Dr Claridge stated that he did have an independent recollection of the discussion beyond what was written in the notes "…because it is quite a surprising situation to have someone refuse the most obvious treatment, from my point of view"[5].

On 5 September 2003 Dr Claridge's notes record that the deceased contacted him again seeking pain relief for which it appears he prescribed 25mg Fentolin patches.

The deceased's diary entry relating to this telephone discussion indicated that Dr Claridge told her that it appeared from her description that the cancer was likely now to be in the bone.

Dr Claridge's notes record that he asked the deceased how long she was prepared to put up with such pain in a context where surgery would "get rid of the pain".

Professor Platell next saw the deceased on 12 October 2003 when he was called to Fremantle Hospital to attend her.

[5] t.313

Previously when Professor Platell had seen the deceased she had been in reasonably good health. When he saw her on 12 October 2003 he described her in the following terms[6] –

> …she looked almost dead. She was down to 35kgs, cachectic, suffering from severe weight loss, sunken eyes, grossly distended abdomen, in severe pain and incredibly unwell.

The term "cachectic" describes the wasting which is seen in patients with advanced cancer. The bodies of these patients are wasted away and they are very weak and tired.

At that stage the deceased was suffering from a complete bowel obstruction which meant that her larger intestine was completely blocked so that faeces which would normally pass through the large intestine could not get through.

If untreated at that stage the deceased was unlikely to survive for much more than 24 hours.

Professor Platell described the pain associated with such an obstruction as extremely severe and arising from a combination of pain from the tumour causing blockage of the bowel, but also the tumour invading adjacent organs. He stated that the tumour was invading the cervix, the uterus, the left ovary and retroperitinal structures causing

[6] t.364

severe pain and in addition there was an "incredibly distended large bowel, almost to the point of splitting" which would cause even more severe pain.

Professor Platell explained that during the following procedure it was necessary for him to remove the cervix and uterus as well as the ovaries and the bowel from the pelvis as well as the fallopian tubes. The large intestine above the blockage was completely full with between 1½ and 2 kgs of faeces which had to be washed out prior to rejoining the large intestine.

It was not possible to remove all the cancer during the surgery and so the procedure was essentially a palliative operation, in that there was still residual tumour left in the pelvis.

The deceased subsequently underwent palliative radiotherapy and her covering loop illeostomy was closed.

Professor Platell was extremely disappointed as after the initial investigations and assessments it seemed that the deceased had a potentially curable rectal cancer which had been contained within the rectum and was then not invading adjacent structures. He believed that if the deceased had followed the initial treatment course she would have had a good chance of curing her disease.

Professor Platell has kept detailed statistics in relation to all of his own patients with rectal cancer which supported his view that had his initial advice been taken she would have had a good chance of surviving her disease. Unfortunately when she presented as an emergency on 12 October 2003, her disease was then no longer curable.

Professor Platell advised the court that the deceased was the only patient who he had treated for rectal cancer who has ever refused any treatment at all.

In my view Professor Platell was a most impressive witness, his dedication and commitment to his patients wellbeing was at a very high level. Nurse Thompson, in her evidence, advised that she had never come across a consultant who had approached her to contact the patient in the way she was approached by Professor Platell.

It is clear that Professor Platell provided the deceased with reliable and clear information in respect of options for treatment of her cancer. In evidence he described how he explained the possible operation to the deceased which involved drawing a simplified picture so that she could understand the anatomical concepts and explained the risks of surgery and the long term implications of having surgery[7].

[7] t.359

Unfortunately it appears that the excellent advice of Professor Platell was not accepted by the deceased and Dr Dingle, who appears to have had an involvement in the decision making process and was present during the deceased's appointments with Professor Platell. In the context of the very clear explanation of the situation by Professor Platell it is remarkable that the deceased did not follow his advice and the reasons for that course of action were explored during the inquest hearing.

OBSERVERS OF PENELOPE DINGLE
FAMILY MEMBERS AND FRIENDS

At the inquest the account given by the deceased in very detailed diaries made by her at the time and her unsent or copied letters was to a great extent inconsistent with the sworn evidence of Mrs Scrayen. In that context it was important to recognise that the deceased's writings were not prepared in anticipation of their use in a court hearing and were written for different purposes.

The diaries and other writings, however, do contain a wealth of detailed information and were written at a time when the events were fresh in the deceased's mind and they record the treatments which she was receiving with precision. I have approached the contents of these writings with caution and have paid particular attention to the observations of independent observers and medical

documentation written at the time as well as to accounts of what the deceased said to others in order to determine the reliability or otherwise of each part of the deceased's diaries and other writings.

In respect of any allegations bearing on the conduct of Mrs Scrayen and others I have been mindful of the scale postulated in ***Briginshaw v Briginshaw*** *(1938) 60 CLR 336)* for applying the standard of proof.

It was particularly important in this context to review the evidence of persons who had contact with the deceased, particularly over the period from early 2003 until the emergency procedure undertaken at Fremantle Hospital on 12 October 2003.

The evidence of siblings of the deceased, Toni Brown, Natalie Brown, Christine Hearne and Anne-Marie Malcolm was consistent and revealed a disturbing deterioration in the condition of the deceased in circumstances where her pain was never adequately managed.

It is clear that the family of the deceased were not advised that she had cancer until 24 August 2003. According to Toni Brown, they had known that the deceased had not been well since at least March/April 2003 but she and Dr Dingle had told them that she had either ulcerative

colitis or, in the case of Natalie Brown, irritable bowel syndrome.

Toni Brown stated that she knew that the deceased had been seeing Mrs Scrayen for homeopathic treatment for two or more years prior to that time and that the deceased had a great deal of confidence in her.

The deceased was described by her sisters as being a very vivacious person who was involved in drama and creative writing. She was also a person who was described as having a very serious side to her character and who was interested in "spiritual matters". According to Toni Brown, she had a very close and a somewhat dependent relationship with Dr Dingle[8].

In the case of Toni Brown, she lived in Mundaring and so when the deceased was living in Fremantle, they did not see a great deal of each other.

Their mother passed away suddenly on 23 May 2003 and at her funeral Toni Brown was aware that the deceased had lost weight and appeared to be experiencing difficulty in getting comfortable while sitting. At that stage the family where not alarmed in a context where they had been told that the deceased had been suffering from ulcerative colitis.

[8] t.19

Toni Brown stated that the deceased had told them that she was consulting Mrs Scrayen in respect of that condition.

On 24 August 2003 the deceased and Dr Dingle advised Anne-Marie Malcolm that the deceased's real diagnosis was rectal cancer. Toni Brown became aware of that advice when she rang her sister Anne-Marie to wish her a happy birthday on that day and was shocked and very angry that they had not been told the truth from the time of diagnosis.

Later that evening Dr Dingle contacted Toni Brown by telephone and told her the news. Later, after the emergency surgery, the deceased told her family that she had been told by Mrs Scrayen not to tell the family about her cancer as the family would not have approved of her being treated by homeopathy alone.

After 24 August 2003 family members generally had much closer contact with the deceased. Toni Brown saw her on approximately a weekly basis. Each time she visited the deceased would say that she was going well and that the homeopathic treatment was being effective.

Toni Brown went to Queensland in early September for two weeks and on her return saw that the deceased, who

was already thin, had lost even more weight. Toni Brown was told on at least three separate occasions by both the deceased and Dr Dingle that the homeopath on that day had assured them that the deceased had "turned the corner" and that her recovery was on the "up and up". During this period according to family members they were told by the deceased and Dr Dingle that those without the "right attitude" would not be welcome visitors at the house. The deceased told Toni Brown that she did not weigh herself as that might undermine her positive attitude which was essential to her cure.

Although the deceased went to efforts to hide her pain, according to family members it was manifestly obvious that her pain was poorly managed and she would sometime cry out when using the toilet and frequently needed a hot water bottle with her.

Bronwyn York, the deceased's niece, had a very close relationship with the deceased and Dr Dingle.

After August 2003 she regularly visited the deceased who was becoming progressively weaker and suffering "incredible pain"[9].

[9] p.6 of Statement of Bronwyn York

Ms York observed Dr Dingle attempting to "coach" the deceased through her pain at times when she believed that the deceased should have been taking appropriate pain killing medication.

When Ms York was visiting the deceased Mrs Scrayen would regularly come to the house to see her. Ms York was not permitted to sit in on the consultations.

According to Ms York she saw the deceased take homeopathic medicine for her pain and at times she would be crying in pain.

Natalie Brown visited the deceased, usually twice a week, from 24 August 2003 until the time of the procedure on 12 October 2003.

Natalie Brown was aware that the deceased kept a diary in which she recorded times when she was to take homeopathic remedies or perform different parts of a homeopathic regime. The deceased told her that she was not allowed to take effective pain relief because that would affect the efficacy of the homeopathic remedies.

When Natalie Brown expressed concerns about the homeopath's treatment, the deceased told her that Mrs Scrayen had told her that having any "negative" people

around her was going to affect the treatment. The deceased told Natalie Brown that she would have to ask her not to visit if she expressed any negative opinions about her treatment.

Often when Natalie Brown visited the deceased during the day the deceased would scream out in pain, usually when she needed to use the toilet. The deceased also often rang Natalie Brown at night and spoke to her for long periods in order to distract her from the pain.

Christine Hearne, another sister of the deceased, stated that they had been asked by the deceased to be supportive of her and Dr Dingle's decision to use homeopathic remedies, diet and tonics rather than conventional medical treatments as this would be beneficial and assist in her recovery.

Mrs Hearne stated that when she questioned the deceased about her deteriorating physical condition, she explained that Mrs Scrayen had told her that it was the natural progression of her illness and that it was not uncommon for a patient to get worse before getting better. Each time Mrs Hearne questioned her sister she was told that Mrs Scrayen claimed that she was at the turning point of her illness and would now be getting better.

At one stage Mrs Hearne asked the deceased about Mrs Scrayen's expertise in treating cancer and was told that she had treated a patient previously, possibly Mrs Scrayen's father, but that person had died. In spite of that fact the deceased was convinced that Mrs Scrayen had the knowledge and expertise to cure her of her cancer.

At one stage during a visit to her home by the deceased and Dr Dingle, Mrs Hearne's husband asked the deceased if she would consider surgery and chemotherapy as an option. According to Mrs Hearne the deceased was not given an opportunity to reply and Dr Dingle quoted statistics and percentages which he claimed indicated that chemotherapy often failed and finished with a statement to the effect of[10] –

> My father had chemotherapy. Chemotherapy killed my father. Pen will not have chemo!

In respect of this account, in his evidence Dr Dingle stated that his father had died from cancer and accepted that he may have made negative comments about chemotherapy.

According to Mrs Hearne the deceased told her that even though Dr Dingle was busy with his work he spent many hours on the internet doing research on cancer cures and finding beneficial tonics for her to take.

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[10] Statement by Christine Hearne tab 80 para 28

Mrs Hearne also received late night telephone calls from the deceased asking her to "help" her through the worst of her pain.

During one of those calls the deceased told Mrs Hearne that Dr Dingle had told her that she was "…imaging pain and I just need to be positive".

During these conversations the deceased refused to take any pain relief and stated that Mrs Scrayen had instructed her that to do so would interfere with the remedies which she was administering.

On about 5 October 2003 a family friend, Gayle Chappell, visited the deceased's home to help with her care.

Mrs Chappell had known the deceased and Dr Dingle for about 18 or 19 years, Dr Dingle and her husband had known each other and through their association she and the deceased had become friends.

Dr Dingle had given Mrs Chappell a lift from the airport and had advised her that the deceased had lost a lot of weight but that he and the deceased believed that she was putting it back on. As soon as Mrs Chappell saw the deceased, however, she burst into tears because "…she was just so emaciated. She was – I have never seen anything so

thin, she was just skin and bone and she could hardly stand up. She was so weak and she was in extraordinary pain"[11].

While Mrs Chappell stayed at the home of the deceased and Dr Dingle, every night the deceased was screaming in pain[12].

Over the period that Mrs Chappell stayed with the deceased she was "...constantly on the phone with the homeopath"[13].

Mrs Chappell believed that Mrs Scrayen and the deceased were in telephone contact at least "a dozen times a day if not more, all times of the day and night"[14].

The deceased's treatment consisted of homeopathic tablets and Mrs Chappell assisted the deceased in gathering up the various homeopathic tablets and counting them out. In respect of the treatment Mrs Chappell believed that there was "absolutely no flexibility. It had to be followed exactly"[15].

Mrs Chappell said that she spoke to Mrs Scrayen once when the deceased was asleep and she answered the

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[11] t.184
[12] t.184
[13] t.185
[14] t.185
[15] t.185

telephone. On that occasion she questioned Mrs Scrayen about the deceased's level of pain and Mrs Scrayen replied to the effect that "…most of Penelope's pain was in her head and she exaggerated her pain and that she was quite dramatic about it"[16].

Mrs Chappell also questioned Mrs Scrayen as to whether the deceased may have been suffering from a blockage, rather than just being constipated to which Mrs Scrayen told her that if that was the case there would be different symptoms[17].

Mrs Chappell stated that the deceased "…definitely believed that she [Mrs Scrayen] was treating the cancer and I think that Peter believed in Penelope and I think that at the time – I think that they were both enthralled by the whole process"[18].

In Mrs Chappell's view the relationship between the deceased and Mrs Scrayen was such that she was totally dependent on Mrs Scrayen and was under her control.

When Mrs Chappell questioned the treatment which the deceased was receiving she was asked to leave the house. According to Mrs Chappell after the operation the deceased told her that she had told Mrs Scrayen that she

[16] t.185
[17] t.186
[18] t.187

had never felt so bad to which Mrs Scrayen had replied, "Well, you know why that is. It is because Gayle is there"[19].

INVOLVEMENT OF SILVER CHAIN NURSES AND DEBORAH COOMBES

On 10 October 2003 Toni Brown contacted Deborah Coombes, a Registered General Nurse and friend of the family, asking if she could give advice to the deceased in respect of constipation. Mrs Coombes advised that the deceased should consult a doctor. Dr Dingle then contacted Mrs Coombes by telephone and asked if she could visit the deceased at home as she had not used her bowels for over a week.

Mrs Coombes visited the house that afternoon and Dr Dingle greeted her at the door and warned her that she might be shocked when she saw how much weight the deceased had lost. He also advised her that the deceased was under the care of a homeopath and did not want any medical interventions or to go to hospital.

Mrs Coombes was then led by Dr Dingle into the bathroom where the deceased was taking a bath.

According to Mrs Coombes "Nothing could prepare me for what I found. Pen was lying naked in the bath in an

[19] t.192

emaciated state"[20]. Mrs Coombes estimated that the deceased's weight would not have been much more than 35 kilograms, her abdomen was grossly distended with a visible mass and she was sweating, breathless and in great pain.

Dr Dingle informed Mrs Coombes that the deceased had not seen a doctor for approximately four months and reiterated that it was their decision to go it alone under the guidance and care of the homeopath and under no circumstances was the deceased to go to hospital and they did not want any medical assistance. Mrs Coombes walked out of the bathroom and spoke to Mrs Chappell, who was still at the house helping out, and said to her, "…what is going on, Penelope is dying?"[21]. Mrs Chappell told her that she should not mention the word dying and should remain optimistic otherwise she would be sent away.

Mrs Coombes became increasingly distressed at the situation and eventually rang a work colleague who was a registered nurse working for the nursing service of Silver Chain. That colleague advised Mrs Coombes to contact the hospice division of Silver Chain and get them involved. Mrs Coombes rang the Silver Chain Hospice and was informed that the deceased would require a doctor's referral.

[20] Volume 1 tab 9
[21] Volume 1 tab 9

Mrs Coombes rang Dr Tabrizian, a doctor known to Dr Dingle and the deceased, and informed him of the situation. Dr Tabrizian was prepared to fax through an urgent referral to Silver Chain Hospice.

That day Nurse Bernie Pilgrim of the Silver Chain Service visited the house and saw the deceased who said that her bowels had not opened for 10 days. The deceased asked for bowel intervention such as enema suppositories. On digital rectal examination Nurse Pilgrim felt a hard tumour.

The left side of the deceased's abdomen was extremely tender to touch. The deceased told her that she had chosen to have no treatment and was using diet and homeopathy medication only. When the deceased said this she was with Dr Dingle in the same room and he agreed with what she was saying.

Nurse Pilgrim told the deceased what could be done to aleviate her pain, but this was rejected by the deceased and Dr Dingle who stated that they did not want her to have morphine and that all they wanted was for her bowels to open.

Nurse Pilgrim stated in her evidence that she appreciated that the deceased was suffering from a very serious condition and that the tumour in her bowel was causing an obstruction of the faeces.

The deceased and Dr Dingle asked Nurse Pilgrim to leave the bedroom while they had a lengthy telephone conversation with Mrs Scrayen. After approximately twenty minutes they decided not to have analgesia.

Nurse Pilgrim advised in her statement, "I clearly remember this client and was upset that she declined our efforts of symptom control for her severe pain and suggested perhaps that her naturopath [homeopath] should visit to review her distressing symptoms".

Nurse Pilgrim stated that during her examination when she put her finger into the deceased's rectum and observed the large mass there, when she withdraw her finger there was blood which was an indication of a tumour and she told her "I can't do bowel intervention. You have a tumour sitting just right here"[22].

Nurse Pilgrim formed the impression that the decisions being made about the treatment of the deceased were made by her and Dr Dingle together.

[22] t.165

On Saturday 11 October 2003 Mrs Coombes again visited the deceased's home where she read notes left by the Silver Chain Nursing Services. Mrs Coombes saw that the notes recorded that the deceased and Dr Dingle wanted no medical intervention. She told the deceased and Dr Dingle that she would withdraw as she felt she could offer no further assistance. She stated that she was terribly upset by the events of the previous 24 hours but felt hopeless to intervene any further.

On 11 October 2003 another Silver Chain Nurse, Registered Nurse Edwin Bagnall visited the home. The notes record that Nurse Bagnall discussed options for bowel intervention which the deceased and Dr Dingle were to think about.

On the morning of Sunday 12 October 2003 Mrs Coombes received an urgent telephone call from Dr Dingle pleading with her to visit the deceased. He advised that the deceased had had a dreadful night, was in severe pain and requesting her to visit.

Mrs Coombes went to the house where she found the deceased lying on a mattress on the loungeroom floor screaming in pain, with her abdomen grossly distended and appearing very frightened. Mrs Coombes begged the deceased to have an injection of morphine, which had been

supplied by the Silver Chain Hospice Nurses, and gave her an injection after which she called the Silver Chain Nursing Service and asked for a nurse to visit.

While they were waiting for the Silver Chain Nurse to arrive, Mrs Coombes knelt by the side of the bed and said to the deceased, "Look just go to the hospital for an X-ray of the abdomen"[23].

Mrs Coombes stated that Dr Dingle's involvement surprised her at the time as according to her, "At no time did Peter say to Penelope, "go to hospital""[24]. She also found the fact that at the time of Dr Dingle's telephone call to her she could hear the deceased screaming in the background but he had not contacted Silver Chain to visit earlier "…incredibly distressing and disturbing…"[25].

At about 9:30am Registered Nurse Pike of the Silver Chain Service arrived at the home and she contacted the Hospice Care Service Clinical Nurse Consultant who advised admission to hospital.

The deceased and Dr Dingle were still keen to pursue alternative therapies, but acknowledged the urgency of the situation and the deceased eventually agreed to go to Fremantle Hospital.

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[23] t.499
[24] t.499
[25] t.499

Later that afternoon the deceased was transferred to Fremantle Hospital where the procedure described earlier in these reasons was performed by Professor Platell.

Mrs Coombes was so upset by what had happened that several days after the deceased was admitted to Fremantle Hospital and had emergency surgery she telephoned Mrs Scrayen and asked her if she was aware that if the deceased had died during or immediately after surgery she might have been investigated regarding the treatment path she had advised and encouraged the deceased to take. According to Mrs Coombes, Mrs Scrayen declined to respond[26].

The deceased's sister, Toni Brown, had accompanied Mrs Coombes when she arrived at the house on 12 October and she waited with the deceased and Dr Dingle at the Emergency Department. The deceased's sister Natalie Brown joined the others at about midday.

During the afternoon the deceased stated that she wanted to have Mrs Scrayen with her. Although Toni Brown told her that would not be a good idea, the deceased contacted Mrs Scrayen using her mobile telephone. Immediately after that telephone call the deceased advised the others that Mrs Scrayen had told her that she would not

[26] t.500

be able to continue treating her if she went ahead and had an operation.

Even at that stage the deceased appeared to be questioning whether or not she should have surgery. The Registrar on duty came to talk to the deceased and explained in stark detail the consequences which would occur if she did not have surgery for the bowel obstruction. He said that she would die in the next 24 hours a most horrible and very painful death involving the vomiting of her own faecal matter. It was only at this stage that the deceased agreed to have surgery.

After the deceased's surgery Mrs Scrayen visited her in hospital and according to Toni Brown she was present in the hospital room while Mrs Scrayen was with the deceased. Toni Brown stated that she followed Mrs Scrayen when she left and told her that the family had a lot of questions that they would like answered about the deceased's treatment. She also said that family members would like to meet with her. According to Toni Brown Mrs Scrayen refused to meet with them and told her that families would often react antagonistically "in cases such as this"[27].

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[27] Volume 1 tab 4

THE INVOLVEMENT OF FRANCINE SCRAYEN

Francine Scrayen was practicing as a homeopath during the relevant period. She stated that she had received a Diploma which qualified her to work as a homeopath from the Oceanic Institute of Classical Homeopathy. She also stated that she had obtained a post-graduate certificate in Belgium over a period of three years which involved visits to Belgium and that she had been practicing as a homeopath since 1998.

According to Mrs Scrayen the practice of homeopathy does not involve treatment for any particular disease. The underlying principle of homeopathy is not to focus on a disease, but rather the totality of the person being treated, including any mental issues, emotional issues and physical issues[28]. Mrs Scrayen stated that she was affiliated with private health service providers and that most private health service providers funded her treatment of patients. She said that she was a member of the Australian Homeopathic Association and on the Australian Register of Homeopaths.

Mrs Scrayen first treated the deceased on 4 April 2001 at which stage she was complaining of tiredness, headaches, depression and other related feelings.

[28] Volume 2 tab 36

Mrs Scrayen provided the court with volumes of records of her treatment of the deceased which she claimed with relatively few exceptions had been written at the time of the various treatments.

Although these records appeared to record the deceased's descriptions of her symptoms in great detail, they contained very little information as to what advice or treatment Mrs Scrayen was giving to the deceased and surprisingly little detail about her treatment plans and the amounts and times when remedies were to be taken.

Although Mrs Scrayen stated that she had completed a first aid course with St John Ambulance Service, she stated that it was a "very basic" course and that her understanding of medical issues was relatively poor[29].

Mrs Scrayen's records reveal very regular contact with the deceased over 2001 and 2002 and then in 2003 extremely regular contacts. During 2003, for example, Mrs Scrayen's notes, which the evidence indicated were not entirely comprehensive, reveal a total of 109 different days on which she had contact with the deceased up until mid October. In the months of July, August, September and October she had contact with the deceased almost every day.

[29] t.1275-1276

In my view the number and extent of these contacts was grossly excessive for any legitimate professional interaction and provided evidence of an increasing unhealthy dependence of the deceased on Mrs Scrayen and her homeopathic remedies and treatments.

The early notes of Mrs Scrayen reveal that she was purporting to treat, or at least discuss with, the deceased symptoms which, with the benefit of hindsight, clearly related to her rectal cancer.

During this period of about 12 months in which the deceased was not receiving any medical treatment for these symptoms the notes reveal consistent monitoring by Mrs Scrayen.

For 31 October 2001 Mrs Scrayen's notes record blood in the stool. On the next attendance, 28 November 2001 there is further reference to blood on the stool and the deceased reporting her stomach getting painful before bleeding. On 18 January 2002 the deceased was again reporting blood in faeces. For 1 February 2002 there is reference to more bloody stools. For 22 February 2002 there is reference to bleeding having stopped but in the same entry there is reference to "bleeds". On 14 March 2002 there is reference to ovarian pain. On 14 May 2002 there is reference to "…stool … lots of … first no blood then

a lot and wind (indecipherable) foul smell”. On 5 June 2002 there is reference to “bloody streaks” then on 26 June 2002 the entry records “lots of blood next day, next day (indecipherable)”. For the same day there is an entry, “after wheat grain lots”. For 17 July 2002 there is a reference, “If I get lots of blood. I get pain before”. On the same day there is an entry that records the deceased stating that she had bloody stools in 1989 for eight months which went away.

On 29 July 2002 the notes record over a 13 day cycle 7 days with no bleeding, 3 days with minimal bleeding and 3 days with “lots”. For the same date there is an entry which records “lots of stomach pain”. On 2 September 2002 an entry records that most of the time there are “little red dots or red streaks”.

For 8 October 2002 the entry records that the deceased had been to Bali for a week and there is a reference to “23 streaks” and “clots”.

On 11 November 2002 an entry records “8 to 9 clots” and “lots of wind”. The entry also records “last few weeks pain in left side”.

On the bottom of that entry there is a reference “perhaps see a doctor”. The entry, however, does not indicate whether this something which the deceased told

Mrs Scrayen or Mrs Scrayen told the deceased. That entry continues with, "she doesn't like her doctor! She will talk to Peter".

It appears that it was not until 5 December 2002 that the deceased first reported her rectal bleeding to a medical practitioner.

In respect of this period the deceased wrote in a draft letter dated 29 November 2004, which does not appear to have been sent to Mrs Scrayen –

> You waited about 12 months, trying to treat, before you suggested I have my internal bleeding diagnosed.
>
> I have since learned that any sort of internal bleeding must be investigated immediately, as it can be a sign that something is seriously wrong. As an alternative health practitioner you should have known this and acted accordingly.

In respect of this contention, Mrs Scrayen's response was that the deceased had told her that she had haemorrhoids and she assumed the reference to bleeding could be explained by recurrence of the haemorrhoid condition.

At the inquest the following exchange between counsel assisting and Mrs Scrayen took place[30] –

[30] t.967

So you considered her rectal bleeding was because of her haemorrhoids? - - - That's what she told me.

Is it within the expertise of a classical homeopath to determine whether rectal bleeding is caused by haemorrhoids or not? - - - I didn't make that diagnose whether it was rectal bleeding. I have to look – when you look at homeopathy you look at their past history as well. That's what I tried to say before, when then a remedy starts working really, like it did in the beginning, because it was working really, really well, you then see that if you keep on going the patient will improve and improve and improve, depending on their level of curability.

You were saying you assumed the rectal bleeding was caused by her haemorrhoids? - - - Yeah, but can I - - -

I am suggesting to you that a classical homeopath cannot diagnose the cause of rectal bleeding? - - - But I'm not saying I did that. I just have to finish this, if I can.

Certainly? - - - Because if you then look at the progression of it, you will then see symptoms that are old symptoms that are coming back. So for me the haemorrhoids was an old symptom coming back. So I didn't make any diagnose. This was, according to Hering's Law of Cure, an old symptom coming back. So it was still going according to the homeopathic expectation.

In my view the accusation contained in the deceased's letter to Mrs Scrayen dated 29 November 2004 was supported by the evidence at the inquest. Mrs Scrayen should not have continued to treat the deceased without insisting that she see a medical practitioner when she was describing internal bleeding and other concerning symptoms over a period of about twelve months.

While I accept that Mrs Scrayen may have believed that the deceased had suffered from haemorrhoids years earlier and the bleeding and pain was "according to Hering's Law of Cure, an old symptom coming back", a competent health professional would have been alarmed by the

developing symptoms and would have strongly advised that appropriate medical investigations were conducted without delay.

The problem in this case was that Mrs Scrayen was not a competent health professional.

After the deceased was diagnosed as having cancer, it is clear that Mrs Scrayen regularly recorded clinical symptoms relating to her cancer and its progress and also recorded the deceased's complaints as to pain etc.

In evidence Mrs Scrayen stated that she was not purporting to treat the cancer to the exclusion of medical treatment and that there was no reason why medical treatment and homeopathic treatment could not be administered at the same time, except where the medical treatment might cause the homeopathic picture to become "blurred or antidoted"[31]. This claim was entirely inconsistent with the account of the deceased as recorded extensively in her diaries and contained in her unsent letter addressed to Mrs Scrayen dated 29 November 2004.

In that letter the deceased referred to Mrs Scrayen as having treated her "exclusively" over a 7 month period and in a reference to "some more facts" the following appears -

[31] Para 4 of Statement of 4 May 2010 volume 2 tab 36

> But, you told me,
>
> "I shouldn't be saying this to you. I'm going out on a limb. But classical homeopathy will cure you".
>
> You told me, however, that I must use the homeopathy alone, or you would be unable to prescribe your treatment accurately. You told me Dr Barnes's protocol would interfere with the homeopathy, as would the intravenous Vitamin C, I was having. As would painkillers. Even our suggestions of other treatments such as massage, chiropractic, reflexology, herbalists and other protocols to run concurrently etc were rejected by you. You also prescribed the diet I was to follow.
>
> I believed you and cancelled all my other treatments. Unlike you, the other practitioners never said they could cure me.
>
> If you had said homeopathy might give me a cure and it might not, that it was impossible to tell, do you really think I would have risked your protocol? I would not have. I would have considered homeopathy as a support therapy only, as I had originally intended.

Mrs Scrayen claimed that she did not purport to treat the deceased's cancer and said that she had no knowledge that the deceased had a belief that she was advising that homeopathy could provide a cure for cancer.

I do not accept this claim by Mrs Scrayen, whom I did not generally regard to be a witness of truth.

It is clear from the evidence of many witnesses at the inquest some of which is detailed in these reasons that the deceased did believe that she was being treated by homeopathy for her cancer and repeatedly said so. In my view Mrs Scrayen could not have been in any doubt as to that issue, particularly in the context of their multiple interactions in relation to her treatment. In addition the fact that the deceased was telling people at the time that

she was relying on homeopathy to cure her was recorded in notes written at the time such as the Silver Chain Nurse entries referred to earlier.

Prior to the 12 October 2003 operation and while she was still very fond of Mrs Scrayen the deceased told a number of people that for an extended period she was receiving only homeopathic treatment and that she believed that it would cure her cancer. While the vast number of lengthy consultations between the deceased and Mrs Scrayen were almost entirely unwitnessed by any third party (even Dr Dingle was not permitted to remain through entire consultations), I do not accept that Mrs Scrayen could possibly have failed to appreciate that the deceased believed that she was treating her for cancer and that in the latter period of 2003, she was not receiving medical treatment for her cancer.

In addition, it is noted that the account of Mrs Scrayen was not entirely consistent in relation to this issue in that she stated that she believed at times her homeopathic remedies were working as treatment of the cancer. In the following passage Mrs Scrayen was questioned about the multiplicity of telephone calls between the deceased and herself[32]-

[32] t.971

And did you think that she was in pain and seriously ill and she was ringing you because she wanted your help? - - - Well, she wanted to know what remedy to take.

Right; and what was she saying was wrong with her then? - - - Well, sometimes it was pain and sometimes – well, the majority of it would be to check whether the remedy was doing something or not.

Right; and was it doing something or not? - - - Sometimes it was, but it didn't hold. That's what I kept on saying to her. The remedy works, but it doesn't hold; the remedy works, but it doesn't hold. If the remedy can do it - - -

What was the remedy supposed to be working by doing? - - - Reducing symptoms.

Shortly afterwards the following exchange took place[33]-

Well, she was ringing repeatedly saying she was in serious pain? Is that what she was doing? - - - No. It could be different things. Sometimes it was pain, but if it was pain, then I would ask her to ring back in 10 minutes or I would stay on the phone with her until I knew it was kicking in.

What was kicking in? - - - The remedy.

And you had remedies you believed stop pain, did you? - - - Well, there was multiple times that it worked within 10 minutes, 20 minutes.

And what remedy was that? - - - That could be any remedy, because – no, there's all the remedies. The 3500 can have a picture of pain in it.

So you're telling us that you believed that these remedies, homeopathic remedies, were stopping her pain for cancer? - - - Well, the pain was reduced, but it never holds and when it's not holding, it means you don't have the right remedy or the body is not capable of responding to your remedy.

In respect of the remedies used by Mrs Scrayen, she claimed that a homeopathic remedy which had effected a "near bullseye" in providing effective treatment was plumbum. Plumbum, according to Mrs Scrayen, is a homeopathic remedy made from lead[34]. In fact plumbum is the latin word for lead.

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[33] t.971-972
[34] t.1036

According to Mrs Scrayen plumbum is manufactured by diluting lead with water so many times that "…there is no physical of it there any more"[35]. In other words the solution is diluted until there is none of the original lead remaining. Mrs Scrayen stated "It's not about the substance, it's about the picture that resonates with the person. There was no affinity with lead, as such, as in pain. It's the picture which Pen presented me with, and that has to fit"[36].

In her letter to Mrs Scrayen the deceased referred to the report of an MRI scan taken in April 2003 which she stated was read accurately by the surgeon and the consulting general practitioner but had been read wrongly by Mrs Scrayen. The letter continued –

> The lymps you informed me were simply overworked were already cancerous. The ovary you informed me was swollen due to another cyst was also cancerous. At this point, my uterus and second ovary were healthy and unaffected. I presume you remember – you examined the scans yourself.

In respect of this claim Mrs Scrayen admitted that she had received the MRI report and read it but stated that she had not discussed medical terminology "…because I do not know anything about it"[37].

[35] t.1037
[36] t.1037
[37] t.1000

Mrs Scrayen was asked why she had retained a copy of the report on the MRI scan if she had not been able to use it to which she ultimately responded, "I just took it and put it in the file"[38].

This was a matter discussed in great detail in the diaries of the deceased[39] and in my view it is difficult to believe that the deceased would have described Mrs Scrayen giving advice in respect of the MRI report if that had not occurred. In the context of all of the evidence I do not accept Mrs Scrayen's denial of involvement in respect of discussion about the MRI report.

According to the deceased Mrs Scrayen attempted to discourage her from having surgery right up until the time of the operation on 12 October 2003. In respect of the events just prior to the operation in her letter dated 29 November 2004 the deceased wrote –

> On October 12 2003, just prior to my operation, I phoned you from emergency.
>
> You said '*if you have the operation, you know I will not be able to continue treating you'*.
>
> You patently tried to dissuade me from having the surgery.
>
> My sister Toni was with me in emergency and I repeated this to her.
>
> She was horrified that you would professionally advise me to reject the operation when I obviously had to have it.
>
> I cannot believe it myself!

[38] t.1001
[39] t.1000

> From a clinical perspective, what was your reasoning? Upon what physical symptoms did you base your assumption that the operation was unnecessary?
>
> I would like this question answered, please.

In response to questions put to her at the inquest about this alleged incident, Mrs Scrayen denied that she had opposed the deceased having surgery and disputed that during the telephone call in question she had recommended against surgery. She stated that her recommendation was in favour of the deceased undergoing surgery.

I accept the account given by the deceased in preference to that given by Mrs Scrayen and note that each of the witnesses who were present at the time of the telephone conversation in the hospital room of the deceased, Toni Brown, Natalie Brown and Dr Dingle stated in their evidence that immediately after the telephone call the deceased advised them that Mrs Scrayen continued to advise her against surgery.

As indicated earlier in these reasons, it was the account of others present in the room that after the telephone call the deceased told them that Mrs Scrayen had said that she would not be able to continue treating her if the deceased went ahead and had an operation.

I am satisfied that the deceased at that stage was contemplating not consenting to surgery because of the

advice of Mrs Scrayen and only changed her mind when the registrar at the hospital described the horrific death which she would shortly experience if she persisted with that course.

In my view Mrs Scrayen's advising against surgery in these circumstances was an outrageous thing to do. Mrs Scrayen had minimal medical knowledge and was giving dangerous advice on matters in respect of which she had no expertise.

In her writings the deceased claimed that Mrs Scrayen had told her regularly that the pain was "between my ears" and that it was only after the procedure on 12 October that she learned that rectal cancer is one of the most painful cancers which can be experienced. While Mrs Scrayen denied to an extent that this had occurred, she stated that she did believe that the deceased was "sensitive" to pain.

Again the deceased's account is supported by the evidence of Dr Dingle and visitors to their home who described the deceased suffering from extreme, poorly managed pain. The deceased's account is also consistent with the evidence of Mrs Chappell referred to earlier that Mrs Scrayen had told her that "...most of Penelope's pain was in her head and she exaggerated her pain"[40].

[40] t.185

I accept that Mrs Scrayen discouraged the deceased from receiving appropriate pain management and that she did tell the deceased that she was imagining much of her very real pain.

A further accusation made by the deceased in her letter to Mrs Scrayen related to her treatments and was to the following effect –

> Where is Your Science? Where is Your Clinical Evidence?
>
> You advised me to perform various procedures that caused me intense physical pain. When I told you my pain was too great to continue some of these treatments, you insisted I must continue them for your protocol to work.
>
> For Example :
>
> Getting me to inject olive oil into my anus once a day.
> Getting me to insert plugs of velvet soap into my rectum so that *"the stop would go"*, when my bowel was completely blocked by the tumour. When I question the validity of this procedure, you advised me it was necessary.
> When I told the surgeon about these treatments he said they were just plain "cruel!".

In respect of the claim relating to the use of soap, Dr Dingle gave evidence that this had in fact occurred Dr Dingle stated that the deceased told him that, "Francine said I can get rid of the blockage if I can put some – have an enema and put some velvet soap ...". He said that he assisted with the insertion of the soap and that it caused pain. Dr Dingle was moved to tears when he described the suffering of his wife at that time.

According to Mrs Scrayen she did discuss velvet soap with the deceased as a "home remedy". She said that she had been told by a childhood nurse that if a child would not pass a stool regularly soft soap could be used as "a lubricant for the anus"[41].

In the context of the above evidence I am satisfied that velvet soap was used to attempt to remove the blockage in fact created by the tumour at the instigation of Mrs Scrayen.

Without going through all of the claims made by the deceased in respect of the "treatment" given to her by Mrs Scrayen, the accounts of the deceased were regularly supported by the objective evidence as to the events which occurred and by the evidence of various other witnesses as to what was being said by her at the time. I do not accept the denials of Mrs Scrayen.

A further claim made by the deceased in her letter of 29 November 2004, which was extensively supported by her diaries, was that Mrs Scrayen had illustrated using "exciting stories" her capacity to get successful results in treating cancer and other serious conditions.

[41] t.1138

In respect of these "stories" a number of the accounts contained in the diary were put to Mrs Scrayen at the inquest and essentially it appeared that all of the stories were ones told by Mrs Scrayen to the deceased, although Mrs Scrayen described the stories in different terms to those in the deceased's diary and in her letter.

Again I accept the account of the deceased to the extent that it is clear that Mrs Scrayen did tell her a number of stories and it is difficult to see why these stories would have been told if the purpose had not been to encourage the deceased to place reliance on her homeopathic cures.

COMMENTS IN RELATION TO MRS SCRAYEN'S INVOLVEMENT

It is clear that over a period of time Mrs Scrayen's relationship with the deceased changed and particularly after her diagnosis with rectal cancer that relationship went far beyond what would normally be expected of a health professional/patient relationship.

Mrs Scrayen's explanation in respect of the increased number of contacts was that she was a dedicated professional and that more and more regular contacts were necessary so that she could change her treatment plan to accommodate changes in the deceased's condition.

In my view the relationship between Mrs Scrayen and the deceased was not a healthy one. The deceased clearly became more and more dependent on Mrs Scrayen.

The events which followed highlight the dangers associated with persons relying on non-science based alternative treatments and the importance of placing reliance on reliable information.

I should, however, record that by purporting to treat the deceased's cancer and, for example, suggesting that she insert velvet soap Mrs Scrayen was not acting in accordance with the Australian Homeopathic Association Code of Professional Conduct. It was recognised by Sylvia Neubacher, who gave evidence about homeopathic practices in Australia, that a non-medically qualified practitioner should not claim that he or she could treat, cure or prevent cancer. The use of soap, was not a recognised homeopathic practice as described.

Chemotherapy, radiation and surgical procedures in this type of context are never an attractive option even when they are manifestly the best option available. In that context it was particularly important that any decisions should be based on the available reliable and accurate information and statistics, unfortunately it appears that Mrs Scrayen provided the deceased with false hope and

provided a much more attractive non-scientific based treatment plan.

The unhealthy reliance placed on Mrs Scrayen's homeopathic "cures" by the deceased and her husband, Dr Dingle, who appears to have been very much involved in the decision-making process, resulted in a tragic series of events and the deceased suffering extreme uncontrolled pain over an extended period of time at a level not normally experienced in societies where there is access to modern medical treatment. During the period of the deceased's treatment by Mrs Scrayen her cancer developed rapidly and at the time she was taken to Fremantle Hospital for an emergency procedure, tragically it was too late for her to be saved.

It was submitted on behalf of Mrs Scrayen that her evidence should be accepted to the effect that she was not told that the deceased would die reasonably soon if she did not have the operation recommended by Professor Platell. It was noted that her evidence was that if she had been told about the advice that Professor Platell and Dr Barnes had given to the deceased (namely that she would die if she did not have the operation reasonably soon), she would have advised the deceased to follow Professor Platell's advice without delay.

Considerable reliance is placed on the fact that as the deceased was not available to give evidence in respect of the matter, the only direct evidence in relation to what was said during the many consultation was that of Mrs Scrayen.

I do not accept the above contention. While I accept that in the absence of the deceased it cannot be established with precision what was said during the consultations. I am convinced that Mrs Scrayen was well aware of the situation. I make the observation that having observed Mrs Scrayen give evidence I did not consider her to be a witness of the truth in respect of these matters.

Mrs Scrayen had over 100 consultations with the deceased in the period leading up to the emergency operation. Mrs Scrayen knew that the deceased had bowel cancer and must have known that she was experiencing great pain.

The deceased's diary entries are supported by the evidence of all other observers of her to the effect that she experienced gross unmanaged pain in the period prior to the operation which she could not adequately conceal. I do not accept that over the vast number of interactions between them, even though a number of these were over the telephone, Mrs Scrayen could have been in any doubt as to what was happening.

It was submitted that, "it was not incumbent on Mrs Scrayen to ascertain precisely what the content was of each treatment program that Penelope was receiving from other doctors". In respect of that submission I observe that Mrs Scrayen is not a doctor, but was purporting to treat the deceased who she knew was very ill and in that context it was incumbent on her to find out whether the patient she was treating was receiving appropriate medical attention.

It was also submitted on behalf of Mrs Scrayen that she was unaware of the extent of the deceased's rapid deterioration in condition between 16 September 2003 and 9 October 2003 as for some of that time Mrs Scrayen was in Sydney and the contact during that period was over the telephone and not in person.

I do not accept that submission and I am satisfied that Mrs Scrayen was well aware of the fact that during that period the deceased was desperately unwell.

In my view the deceased was extremely unwell prior to 16 September 2003 and that fact was known to Mrs Scrayen. Her own notes contain multiple references to the deceased suffering pain during the period in question and during the very many telephone conversations which took place I am satisfied that the situation must have been made very clear.

Other witnesses who saw the deceased during this period describe her in such pain that she could not have concealed the fact of her deteriorating condition from Mrs Scrayen even if she had wished to do so.

INVOLVEMENT OF DR PETER DINGLE

In the context of the present case where the deceased suffered a great deal of unnecessary pain and did not take steps to have her aggressive cancer treated, an obvious question which arose related to the involvement or lack of it of her partner, later husband, Mr Dr Dingle.

The failure on the part of the deceased to take advantage of the treatment recommended by Professor Platell was particularly concerning in the context of the fact that the deceased's husband, Dr Dingle, is an Associate Professor at Murdoch University and a part-time speaker who has written books and regularly gave talks and presentations on health and wellness. In particular it appeared that Dr Dingle regularly gave presentations in respect of what was described as the "Dingle Deal" in which the "Deal" stood for diet, environment, attitude and lifestyle[42].

[42] t.86

A book written by Dr Dingle which appears to have been self-published in 2004 was, The Deal for Happier, Healthier, Smarter Kids; a 21st Century Survival Guide for Parents, which contained a number of references to appropriate approaches to health complaints, including cancer.

It appeared, however, that Dr Dingle had no qualifications relating to "health and wellness", he had commenced a course in clinical nutrition but had never sat an examination in the subject. He had received a Bachelor of Education which had initially been a graduate diploma, from Rushton College, Victoria, following which he had completed one year full time at Murdoch University studying science which together with his credits resulted in his being given a Bachelor of Science. He subsequently completed an Honours Degree at Murdoch University based on a research project into pesticides exposure and then a research PhD, the subject for which was into indoor air quality, with a strong focus on formaldehyde[43].

Dr Dingle met the deceased in about 1989 and they formed a close friendship which developed into a relationship and the deceased moved into Dr Dingle's home.

[43] t.589

According to Dr Dingle, although he knew that the deceased had had different issues with her bowels over a period of years, he was not aware that in 2001 and throughout 2002 she was suffering from rectal bleeding, pain and altered bowel actions.

This was surprising as it appeared from Mrs Scrayen's notes of her consultations that the deceased regularly complained of these conditions during that period and they must have been troubling for her.

At the inquest Dr Dingle appeared to wish to distance himself from knowledge of Francine Scrayen and he initially claimed that he did not know of her until after the deceased's cancer had been diagnosed in 2003. In a statement provided to the Coroner's Court dated 5 June 2010[44] Dr Dingle claimed that in the first week after the diagnosis of cancer he had booked the deceased in to see Dr Ivy Bullen and talked with her about having the operation. He claimed that, "At this stage I did not know about Francine".

It appeared, however, that Dr Dingle was aware of Mrs Scrayen prior to the diagnosis of the cancer and indeed consulted with her in a personal capacity on 8 May 2001 and 5 October 2001. These two attendances related to

[44] Exhibit 3 at para 16

fertility treatment at a time when the deceased and Dr Dingle were eager to have children.

When questioned about the consultations and his claim of lack of knowledge of Mrs Scrayen, Dr Dingle stated that he had forgotten about his earlier contacts with Mrs Scrayen.

Documentation relating to Dr Dingle's visits to Mrs Scrayen in 2001 were received in evidence[45] and these revealed that Dr Dingle had participated in lengthy consultations during which he had provided Mrs Scrayen with very detailed personal information.

In my view, particularly in the context of the events which took place in 2003, Dr Dingle is unlikely to have forgotten about his earlier contacts with Mrs Scrayen and I do not accept that he had entirely forgotten two lengthy consultations in 2001.

It is noted that by the time of the deceased's examination by Professor Platell on 27 February 2003 she had visited Mrs Scrayen on at least 26 occasions and possibly more than 32 occasions[46].

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[45] Exhibit 13
[46] Exhibits 22 and 20

It is difficult to believe that Dr Dingle could have been unaware of the fact that his partner had been visiting Mrs Scrayen over that period.

Dr Dingle stated that within weeks of the deceased being diagnosed with cancer he became aware that Mrs Scrayen was treating her for her cancer. He said that he was initially not concerned that she was seeing Mrs Scrayen for cancer treatment, he said, "I didn't know anything about homeopathy. I didn't know any – and I still don't"[47].

Again this claimed ignorance of homeopathy is difficult to accept in a context where Dr Dingle had seen Mrs Scrayen for homeopathy treatment on two occasions himself in 2001. The visits cost Dr Dingle $85 and $45[48] respectively and presumably he had some idea about the service he was paying for.

Questioned about his response to the advice that Mrs Scrayen was treating his wife's cancer the following exchange took place[49] -

[47] tT.600
[48] See exhibit 13
[49] t.600

"No, but your wife told you that she – well, you found out she had cancer and she told you she was seeing Francine Scrayen to treat the cancer? - - - Yep.

Well, did you ask her what she was? - - - I did. Well, like during that time I asked her on numerous occasions what she was and Pen on occasion said that Francine was miraculous, marvellous and can cure cancer and has cured cancer.

Did you understand she was a homeopath? - - - At that stage, yes, I did".

Dr Dingle was asked about the treatment which Mrs Scrayen was providing and the following exchange took place[50] -

"Right at the beginning, when you found out about the cancer and you found about - - -? - - - Yes.

- - - Francine Scrayen, the homeopathy involved in treating her for cancer - - - ? - - - Yes.

At that stage, did you find out what precisely Francine Scrayen was giving her? - - - No, I didn't".

In the context that Dr Dingle was an academic who routinely conducted research he was asked about any investigations which he might have made and the following exchange took place[51] -

"Why didn't you make some sort of inquiries to find out it wasn't full of toxic substances? - - - Because it hadn't occurred to me to look for toxic substances in anything that was being prescribed to Pen by a practitioner.

Why not? It's not as though she's a registered medical practitioner. She's a homeopath about which you said you knew almost nothing? - - - Yes. She went and got them from a – we got those from a pharmacist, or from Francine during the time, so I have no reason to believe that there would be anything toxic in them.

Because you had total trust I Francine? - - - No, not at all. I didn't.

[50] t.601
[51] t.603

Well why not find out what they were, then, if some of them came from Francine? - - - Yes.

Why not find out what they were? - - - I don't know, your Honour

…

So what was she receiving from Francine in the way of medications, if I can use that term? Were there a number of different tablets? - - - Yes, there were.

A lot of different tablets? - - - At one stage we probably had 20, 30 bottles. Sorry. I would suggest even more of those".

Dr Dingle was asked a number of questions about the response of the deceased and himself to the diagnosis of cancer and the advice of Professor Platell and he stated that following advice that the deceased should have surgery they considered various options.

Dr Dingle was asked why other options were even considered and the following exchange took place[52] -

"What I am wondering is, why look at any other options? You'd had the advice of an expert consultant surgeon? - - - Correct.

Didn't you think that his advice was the obvious option? - - - I think there are many modalities that we can use to help us in looking after our health and wellbeing, and that one - - -

That's – in respect of a tumour growing, as in this case, did you not consider that you should just take the advice of the surgeon? - - - At that early stage we had considered and, as far as I understood in the beginning, we were going to have surgery. Pen considered having surgery in that first part".

While Dr Dingle claimed that in the early stages following the diagnosis and advice of Professor Platell the possibility of surgery had not been excluded by the deceased

[52] t.608

and himself, he stated that, "chemotherapy and radiotherapy was never an option for Pen"[53]. He said that this was the deceased's view, but also stated that he did not believe in chemotherapy and radiotherapy in all cancers[54].

Dr Dingle subsequently stated that he was not supportive of chemotherapy or radiotherapy for the deceased[55].

During the period when the deceased was considering a number of different "options", it would appear that Dr Dingle was conducting some research into the various alternatives which she might consider. Although Dr Dingle claimed in his evidence that he was too busy to devote much time to this research, it would appear that he did research the internet and obtained some publications relating to the deceased's cancer, particularly focused on alternative forms of treatment.

As discussed earlier in these reasons Dr Dingle wrote on Murdoch University letterhead a letter provided by the deceased to Professor Platell asking that a CAT scan not be undertaken but that an MRI be used in April 2003.

In a letter to Professor Platell dated 9 April 2003 the deceased wrote that –

[53] t.609
[54] t.610
[55] t.611

"During the interval since we last spoke I have decided to treat my disease from a wholistic perspective suing a multifaceted approach. My program incorporates strict dietary modifications, supplemental nutrition and sweeping lifestyle and attitude changes. My husband is a Phd researcher with a toxicological and clinical nutrition background and he has been investigating the latest research into alternatives via comprehensive searches of scientific journal data bases and through discussions with cancer specialists here and interstate".

Although this letter purported to come from the deceased and Dr Dingle, Dr Dingle claimed in his evidence that the extent of any research he was conducting was very limited and he was not involved in writing the letter.

It is clear, however, that Dr Dingle did conduct some research into alternative forms of treatment and referred his wife to medical practitioners who offered alternative treatments.

During 2003 it became clear to Dr Dingle that his wife was rejecting other forms of treatment and ultimately decided against having surgery as recommended by Professor Platell.

Dr Dingle stated that the deceased repeatedly told him that Mrs Scrayen was convinced that she could cure cancer and that, "This was a great opportunity to do something great"[56]. According to Dr Dingle, Mrs Scrayen's advice on the pain issue was that, "Most of it was in Pen's mind and that Pen could control the pain with her mind"[57]. Dr Dingle

[56] t.620
[57] t.620

stated that the deceased told him about these matters repeatedly in the period before the emergency procedure of 12 October 2003.

Asked about what happened when the deceased was not taking appropriate pain killing medications, he stated that she would tell him that Mrs Scrayen's advice was that such medications would interfere with the homeopathics and that she needed to be able to identify all of the symptoms[58].

Dr Dingle stated that the relationship between Mrs Scrayen and his wife was an unusual one and when asked about that relationship the following exchange took place[59] -

> "What about it made you think it was an unusual relationship? - - - The frequency of telephone calls and conversations, the – well, the reluctance of Pen to accept anything else, other than what had been run past. So there was a total dependency on everything from Francine".

In spite of his knowledge about Mrs Scrayen's homeopathic treatments and the fact that his wife was rejecting the advice of medical practitioners and was seriously ill Dr Dingle was a party to misleading her family members and not letting them know she was suffering from cancer until 24 August 2003 and he and the deceased continued to provide a united front to outsiders. Dr Dingle

[58] t.621
[59] t.623

also purchased many of the homeopathic remedies for his wife particularly when she was too ill to do so herself.

The deceased would have been physically unable to continue with Mrs Scrayen's regime of treatments for as long as she did without Dr Dingle's support for what was going on and it is likely that without his involvement, third party intervention would have occurred much sooner.

CONCLUSIONS AS TO THE INVOLVEMENT OF DR DINGLE

Dr Dingle was clearly a forceful personality who could have been a strong advocate for acceptance of the advice of Professor Platell, but unfortunately had a background and interest in health and wellness which included a history of criticism of mainstream medical practice. Dr Dingle was particularly outspoken in his criticism of chemotherapy, even making highly critical comments of the attitude of mainstream oncologists in his book published in 2004, after the deceased was known to be dying of her cancer and prior to her death.

In evidence Dr Dingle claimed to have a very poor memory of the latter part of 2003 and to not be able to recall important events during that period. I do not accept these claims of memory loss. While I accept that Dr Dingle was distressed through much of that time, I do not believe the claims of extensive memory loss as a result.

While Dr Dingle did not initially oppose the deceased having surgery for her cancer, I accept that he did conduct research into alternative forms of treatment which provided the deceased with mixed messages as to the appropriate action which she should take. Later he appeared to have become caught up in the situation and did not take positive action to introduce outside help, separate his wife from Mrs Scrayen's influence or otherwise act to save his wife from the terrible pain which she was suffering or from inevitable death.

After her diagnosis with cancer it appears that Dr Dingle did embark on treating the deceased with aspects of the "Dingle Deal", namely dietary advice, provision of supplements and the use of positive thinking and goal setting. Some aspects of this treatment (such as taking magnesium supplements) extended right through to her emergency surgery in October. While the evidence revealed that the deceased lost a great amount of weight prior to the surgery and in that context dietary limitations were unfortunate, it appeared that the deceased received dietary advice from others as well as Dr Dingle including Mrs Scrayen and the source of some of the dietary restrictions was unclear.

Dr Dingle was asked why he did not intervene in a robust fashion at a time when he appreciated that the deceased was relying on homeopathic treatments on a

number of occasions and the following exchange summarises much of his evidence in that regard[60] -

> "Just so I properly understand this, Dr Dingle, do I understand that you yourself started to get deluded by what was going on, that you started to believe that perhaps what Francine Scrayen was saying, you were hearing through your wife, was in fact achieving a result? - - - Correct, your Honour. Penelope would say things and I would say yes and I would also say, you know – I mean, I really remember very little, except that those communications with Pen about the – you know, what Pen thought about the treatment and was happening.
>
> Right. You were helping with what was going on by providing her with the materials and so on that Mrs Scrayen had asked that she take? - - - I would collect them. On some occasions, I would go to the chemist and get something, yes.
>
> Right. Is it the case that you became so involved in it and wrapped up in it that you were starting to believe in it or is the case – well, perhaps put in another way, you say that you – now, sitting here, you clearly appreciate that the treatment wasn't being successful and that Penelope was, unfortunately, just going downhill at the time? - - - Mm.
>
> Is that something you appreciated then? - - - I appreciate that now.
>
> Right? - - - It's so easy to see now. When I look at it, when I think I was in then - - -
>
> Right? - - - I wasn't even – while I was seeing deterioration – you know, I can remember seeing Pen deteriorate, but when I think about what I was doing and seeing, it was almost very – it was different. It was almost a dream or a nightmare in a lot of that, a dream or a different state of being. I can't understand it or explain it".

Dr Dingle was asked a number of questions in relation to the research which he did conduct and it appears that much of the research focused on non-science based or poorly researched non-peer assessed writings.

Dr Dingle placed considerable reliance on what was described as the "Moss Report" at the inquest. It appears that the author, Ralph Moss PhD, has available on the internet access to a number of sites dealing with various

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[60] t.770-771

medical conditions, the relevant one being “the Moss Reports Rectum”[61]. This report had been downloaded by Dr Dingle at considerable cost and was repeatedly referred to by him in his evidence. This report was reviewed by Dr Guy Van Hazel, Clinical Professor School of Medicine and Pharmacology, University of Western Australia, who expressed the view that much of the report was, “Basically a – what seems to be an advertisement for alternative medicine”[62].

Professor Van Hazel went on to state that the report was both unreliable and out of date as well as being full of factual errors[63].

Professor Van Hazel was asked about Dr Dingle’s writing and in particular a claim in his book *The Deal for Happier, Healthier, Smarter Kids*, that cancer is largely untreatable and that rates of cancer and death from cancer continue to increase despite “The billions of dollars injected into treating the illness”. Professor Van Hazel was able to refer to available statistics which revealed that death rates for breast cancer, colon cancer and other forms of cancer had decreased significantly. Importantly in the context of rectal cancer, survival rates had improved substantially over the period of 1982 to 1998, based on a 5 year survival period.

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[61] exhibit 12
[62] t.1077
[63] t.1077-1078

In respect of Dr Dingle's writings critical of chemotherapy and radiotherapy, he also advised that the comments were incorrect and confused the situation in which those treatments are given.

It appears that until her death the deceased and Dr Dingle cared for each other and shortly before her death the deceased married Dr Dingle. After her surgery in 2003 when the deceased realised that her failure to accept Dr Platell's advice had cost her her chances for life, the deceased was highly critical of Mrs Scrayen whom she blamed for misleading her, but she did not similarly blame Dr Dingle.

It appears that Dr Dingle was a victim of his own misinformation and did not take the positive actions which would normally be expected of a person in his position to save a loved one from herself. Dr Dingle, himself, described his position in words which I accept as accurate as follows[64]-

> But I am human and open to mistakes and the catastrophe that happened around Francines treatment was perhaps the biggest mistake I will ever make in my life. That is easy to see in hindsight but not so easy when you're in it and don't know what is going on.

[64] exhibit 3, para 67

WAS THERE A PACT?

Jennifer Komberger, a friend of the deceased gave evidence of a conversation which she said took place with the deceased in Fremantle Hospital after her surgery to the following effect –

> She asked if I would ever forgive her and Peter for what they had done. She said that she and Peter had been so foolish to gamble with her life. She then related to me that the three of them – herself, Peter Dingle and Francine Scrayen had indeed made a pact, a deal: After Pen was cured of cancer by Francine Scrayen, Peter would write the book that would champion, make famous their, their combined success. They were both deeply disturbed at the horrible truth they now had to face – the possibility that Penelope might not survive this monstrous experiment.

While I accept that Ms Kornberger was reliable witness and that this conversation did take place, other evidence at the inquest did not provide a basis for a finding that such a pact did exist and the evidence of Dr Dingle and Mrs Scrayen was to the effect that no pact as such was ever made.

In this context I also note that the deceased's very extensive diaries do not record any such pact being entered into.

The deceased's condition did vary and her pain levels went up and down. At the times when her condition appeared better and her pain levels were relatively low I accept that all three of the involved persons may have become relatively optimistic and there may have been talk of

writing up their "success" in the event that the deceased survived her cancer. I do not, however, consider that there was a concluded plan to that effect.

THE INVOLVEMENT OF DR WILLIAM BARNES

Dr Barnes is and was a medical practitioner, registered in the State of Western Australia. His practice involves seeing people with chronic illness, particularly people suffering from cancer. He agreed with the proposition that he had a nutritional medicine focus in his treatment.

His biography on his website stated that his primary interest was in researching and developing non-toxic therapies for cancer.

The deceased saw Dr Barnes who was recommended to her by her husband. At the time Dr Barnes and Dr Dingle were acquaintances.

Dr Barnes told the deceased she should have surgery and he accurately explained the problematic implication of her MRI scan to her.

It is clear also, however, that he offered her intravenous vitamin C treatment and carnivora or venous flytrap treatment which he told her could slow the growth of

her tumour. Carnivora is a phytonutrient (herbal) extract of the venous flytrap plant Dionaea Muscipula.

On every occasion when the deceased visited Dr Barnes, Dr Dingle accompanied her. She first visited Dr Barnes on 9 April 2003 at which time the deceased stated that she did not wish to have surgery and did not wish to lose her uterus. It was in that context, according to Dr Barnes, that he suggested to her a less radical surgical option. He suggested that she have a CT scan of her abdomen and return to Dr Platell to discuss such an option with him.

The deceased returned to see Dr Barnes on 12 April 2003. On this occasion she advised him that she had had a further appointment with Dr Platell who had offered a less radical surgical option.

On 15 April 2003 the deceased returned and stated that she did not wish to proceed with surgery, chemotherapy or radiotherapy.

In his notes Dr Barnes recorded, "Peter not wanting to do it now. Have as last resort". In his evidence he explained that Dr Dingle had made the statement that they did not want surgery to go ahead at that point in time.

Dr Barnes recommended a plan which would involve the deceased receiving intravenous carnivora followed by a break and then receiving oral carnivora. He state that carnivora would have been given together with vitamin C.

In evidence Dr Barnes stated that carnivora was an expensive treatment and adding the cost of vitamin C, the total cost would have been around $500 per week.

According to Dr Barnes he believed that carnivora together with vitamin C could stop the tumour growing and this is what he told the deceased at the time[65]. He claimed there is evidence to support the claim that each of these substances has the potential stop a tumour growing and provided articles which he claimed were to that effect[66].

In respect to the use of carnivora, oncologist Dr Van Hazel stated, "There's never been any reliable evidence that such treatment slows the growth of cancer"[67].

Dr Van Hazel expressed the opinion that the use of carnivora in these circumstances was "completely unreasonable" because[68] "… we live in an age where we have proven treatments, and to suddenly use treatments which have no proof of evidence at all is unconscionable".

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[65] t.418-419
[66] exhibits 18 and 25
[67] t.1066
[68] t.1066

In respect to vitamin C treatment Dr Van Hazel commented –

> Vitamin C has been extensively investigated since Linus Pauling, as you will remember, your Honour, was a Nobel Laureate and he pushed vitamin C. It has been studied with two large studies at the Mayo Clinic in the USA. Both studies show that there was absolutely no evidence of efficacy, and the second study was done specifically with coloreactal cancer, and there was no improvement in quality of life, length of life, shrinkage of tumour, anything you care to measure with vitamin C.

On 16 April 2003 the deceased signed an agreement with Dr Barnes as a treating physician which purported to be part of the "Special Access Scheme" which allowed importation and administration of therapies not currently registered as therapeutic substances in Australia. This agreement related to the proposed carnivora treatment.

The agreement provided that "these therapies" may be administered to a patient suffering a terminal illness and recorded that the law required the patient to sign an agreement/waiver releasing Dr Barnes of any responsibility if the therapy caused any unforeseen ill effects.

On 18 April 2003 the deceased contacted Dr Barnes by telephone and advised that she was not proceeding with any part of the treatment he had offered her. She stated that she wished to continue with classical homeopathy and that this would be a stand alone therapy. According to Dr Barnes she reiterated that she did not wish to proceed with the conventional therapy on offer.

On 22 May 2003 the deceased came to see Dr Barnes after one month on a cancer diet and homeopathy prescribed by her homeopath.

She reported to Dr Barnes that she felt better and her bowel motions had improved.

The deceased again stated that her decision was not to proceed with surgery despite being told by her surgeon that she would die reasonably soon without it. She stated that she had confidence in the homeopathic approach. The deceased had lost weight and now weighed only 48.2kgs, but was not showing signs of obvious distress.

On 17 June 2003 the deceased again saw Dr Barnes. On this occasion he recorded that she had pain in the buttock region and aching around and in the vagina. At that stage she was saying that she had a lot of pain but was, "Taking a homeopathic journey to the next stage"[69].

Dr Barnes stated in evidence that he was concerned about her deterioration and suggested that she see her surgeon again, however, she was convinced by her homeopath that she was healing and wanted to continue on her regime. She felt that Dr Barnes was being negative and trying to undermine the effectiveness of her treatment.

[69] Notes of Dr Barnes tab 58 volume 5

The reference to a recommendation to see her surgeon was not contained in the notes made by Dr Barnes at the time.

Although Dr Barnes recorded the deceased telling him that she was using homeopathy to treat her cancer his notes do not record him giving the deceased any advice about whether this was likely to be effective.

The deceased wrote a letter to Dr Barnes dated 11 October 2004[70] in which she referred to a conversation between Dr Barnes and herself which she said took place in November 2003 during which she claimed Dr Barnes said that he should have found a way to tell her that homeopathics were not going to help her but that he had been "frightened of scaring me off" had he "taken a hard line".

Dr Barnes was asked about this in evidence and the following exchange took place –

> But there's nothing in your notes to suggest you told her that homeopathy wasn't going to help her, and there's nothing in your statement to suggest that you told her that homeopathy wasn't going to help her. Are you coming here now and saying that, in fact, you did tell her that despite the fact that you didn't put it either in your notes or in the statement you prepared for the inquest? - - - Well, I told her to have surgery.
>
> I under that, but did you tell her that the homeopathy was not going to be effective for her? - - - I can't recall.

[70] t.460

I accept the deceased's claim that Dr Barnes did not tell her that using homeopathic medication to treat her cancer was likely to be ineffective.

Dr Barnes prescribed a number of supplements for the deceased in March 2003 and the Rener Health Centres standardised document he used contained a section for the prescription of "Homeopathic Drops".

In May 2004 his practice used a similar sheet to record a number of alternative substances prescribed for the deceased. This sheet was headed "Dr William H Barnes" with his qualifications and contact details and the bottom section was headed "Homeo Drops". The deceased was in fact prescribed homeopathic medications by a nurse working for Dr Barnes in July 2004, and these are recorded in this section of the sheet as well as in the progress notes.

It appears, therefore, that Dr Barnes was supportive of homeopathy treatments, at least in some circumstances, and this may explain why he may not have been more assertive in making it clear that homeopathy was not going to help her.

Dr Barnes saw the deceased again on 28 June 2003 but made very few notes of that consultation. He stated, however, that he probably would have spent about

45 minutes with her but did not have an independent memory of the consultation. In particular the notes made no mention of taking a history, of any examination, of weighing the deceased or of suggesting surgery or suggesting further monitoring of her condition.

Dr Barnes had no further contacts with the deceased prior to her emergency surgery of 12 October 2003. The deceased consulted him on 4 November 2003 post surgery, at which stage her weight was 42kgs. She was extremely thin and weak.

She had at that stage consented to have radiotherapy to her abdomen and pelvis together with a six month course of chemotherapy.

The deceased wanted Dr Barnes' assistance to improve her health and strengthen her immune system.

Dr Barnes agreed to provide adjunctive nutritional therapy which comprised intravenous vitamin C and vitamin B with carnivora. In addition the deceased received intra-muscular mistletoe as well as other alternative remedies. Dr Barnes continued to give the deceased intensive and complicated treatment in late 2003 and through most of 2004 at a cost in the order of $30,000. In the opinion of Professor Van Hazel this treatment was of no benefit to her condition.

When the deceased saw Dr Barnes in 2003 a clear message was needed from all medical practitioners she consulted that immediate action was required and any delays in undergoing surgery could be fatal.

While Dr Barnes did recommend surgery his suggestion that carnivora and vitamin C treatments could stop the tumour growing may have undermined the clear message which Professor Platell was intending to convey to the deceased.

While I do not intend to review the literature relating to carnivora or vitamin C treatments in these reasons, in my view when the deceased saw Dr Barnes her chances of survival were likely to diminish quickly and dramatically the longer she delayed taking Professor Platell's advice. This was not a time for unproven treatments and any suggestion that these treatments could halt or delay cancer growth and that there could be any further unnecessary delay in implementing Professor Platell's advice was most unfortunate.

DR IGOR TABRIZIAN

The deceased attended Dr Tabrizian's clinic, known as Nutritional Review Service, on three occasions. On each of these occasions she was accompanied by Dr Dingle. At the

time Dr Tabrizian was a general practitioner who specialised in counselling for diet and nutrition.

Dr Tabrizian made brief and very inadequate notes of the visits.

Dr Tabrizian was an acquaintance of Dr Dingle's and had first met the deceased through him in 2002. Dr Tabrizian was the author of a book Nutritional Medicine Fact or Fiction (2002)[71].

The first visit was on 15 April 2003. According to Dr Tabrizian the deceased was "coordinating a multitude of doctors and natural therapists in order to create an "eclectic" treatment schedule for herself. On each occasion her wish was to discuss nutritional strategies for her cancer"[72].

Dr Tabrizian's notes refer to the tumour described by the deceased and Dr Dingle as being 8.5 cm wide and 55 mm up from the anal verge. The notes contain a reference to "97g", which Dr Tabrizian explained as being a recording of his calculation of the weight of the tumour which he "based on the average density of human tissue"[73].

[71] exhibit 24
[72] Tab 21 of volume 1
[73] t.223

According to Dr Tabrizian the deceased and Dr Dingle said that they were not planning on an operation and were going to rely on "juices" and "medication". The reference to the "juices" and "medication" did not appear in Dr Tabrizian's notes and there was no reference to his advising that the deceased should undergo an operation.

Dr Tabrizian's notes for that date refer to a number of tests for vitamin D, vitamin C, calcium and selenium which he claimed he was of the view that the deceased should undertake with a view to adjuvant treatment after surgery but were refused.

On the next attendance, which took place on 8 July 2003, the only the entry in Dr Tabrizian's notes was "discussed supplement".

According to Dr Tabrizian during this consultation he reiterated the benefits of having the surgery but the discussion was "extremely exacerbating" as the deceased did not accept his suggestion.

On 22 August 2003 the deceased again saw Dr Tabrizian and on this occasion he recorded, "real pain 1300, 1600, 2100, 0200, 5mg tramadol".

According to Dr Tabrizian the deceased was experiencing peaks of pain at the times recorded in his notes and he offered her the tramadol as an analgesia for the pain.

Although the deceased did not attend for another consultation, according to Dr Tabrizian in August 2003 Dr Dingle contacted him by telephone to say to that the tramadol was giving good pain relief, but constipation was an issue. This conversation was recorded in a note made by the receptionist at his practice, but was not dated. Dr Tabrizian had written on the note, "probably late August 2003", according to him at a time when he was trying to "put it in a timeframe"[74].

On 10 October 2003 Dr Tabrizian received the telephone call from Mrs Coombes referred to earlier in these reasons after which he faxed through a referral to the Silver Chain Service. According to Dr Tabrizian he received the telephone call when he was seeing another patient and although he made some notes of the conversation on scrap paper he did not retain those notes. He did not retain a hard copy of the Silver Chain referral on his file.

Dr Tabrizian's letter addressed to Urgent Hospice Referral recorded that, "She has declined standard medical

[74] t.232

treatment so far and wishes to be nursed at home. So far her husband has been able to look after her, but at this point she has several problems which cannot be solved". The problems listed by Dr Tabrizian included "Constipation merging into bowel obstruction"[75].

It would appear from notes maintained by the deceased that she consulted with Dr Tabrizian so that he would provide nutritional medical approach to cancer. In a letter written in 2004 by the deceased in which she was applying for access to the "Gonzales Program" she wrote that, "Dr Tabrizian does my hair analysis, reviews my nutrition and tweaks my supplements accordingly".

On the occasions when he saw the deceased although he knew she was very ill Dr Tabrizian did not request access to the colonoscopy results or the MRI scan. He did not take a detailed history or examine the deceased, or even suggest adequate monitoring. He did not ask questions about which other doctors she was seeing, request any information from them or make any efforts to contact them so that there could be a united front encouraging the deceased to take appropriate medical intervention.

Although he did tell the deceased to have surgery on at least one occasion, in April 2003, there is no independent evidence which would indicate that he repeated that advice.

[75] Volume 7 tab 63

Dr Tabrizian has published books disparaging of the medical professional generally and the conventional approach to cancer treatment in particular and he wrote a glowing reference on the back of Dr Dingle's book referred to earlier herein, The Deal for Happier, Healthier, Smarter Kids, a book which contains a chapter which is disparaging about conventional medical approaches to cancer.

Dr Tabrizian does not appear to have been acting as a doctor normally would and I have some difficulty understanding in what capacity Dr Tabrizian considered he was seeing the deceased. While I accept that Dr Tabrizian was surprised by the deceased's decision to not have surgery, his failure to assess her condition is difficult to reconcile with his responsibilities as a doctor.

CONCLUSION

The deceased died from complications of metastatic rectal cancer on 25 August 2005.

In my view the deceased's rectal cancer was present and causing bleeding and other symptoms from at least 31 October 2001. During the period 31 October 2001 until at least the end of November 2002, the deceased regularly described the symptoms of her rectal cancer to a homeopath, Francine Scrayen. It was not until

November 2002 that Mrs Scrayen and the deceased discussed the possibility of reporting her rectal bleeding to a medical practitioner and it was not until 5 December 2002 that she first reported those problems to a doctor.

I accept that Mrs Scrayen believed that the deceased had suffered from haemorrhoids years earlier and the bleeding and pain was "an old symptom coming back", but a competent health professional would have been alarmed by the developing symptoms and would have strongly advised that appropriate medical investigations be conducted without delay.

Mrs Scrayen was not a competent health professional. I accept that Mrs Scrayen had minimal understanding of relevant health issues, unfortunately that did not prevent her from treating the deceased as a patient.

During that period of approximately 12 months, I am convinced that the deceased's cancer developed and spread. At that relatively early stage it is clear from the evidence from Professor Platell that the deceased stood a good chance of surviving had the cancer been diagnosed and had she consented to having appropriate mainstream medical treatment.

Clearly if the cancer had been diagnosed earlier it is likely that the appropriate response may have been less

invasive and the deceased may not have been so reluctant to undergo a proposed treatment plan, particularly if it did not involve chemotherapy or radiotherapy or impact on her fertility.

On 25 February 2003 the deceased had a colonoscopy which confirmed a rectal tumour. She was referred to Professor Cameron Platell by Dr Trevor Claridge on 27 February 2003.

Professor Platell examined the deceased on 27 February 2003 and discussed with her the findings of the colonoscopy and biopsy. He advised that if the cancer was localised to just the rectal area she should have a course of adjunctive pre-operative chemotherapy and radiotherapy, followed by surgery to remove the cancer and reconstruct the bowel.

The advice given by Professor Platell was excellent and the quality of care which he offered to the deceased was of the highest order.

Unfortunately the deceased did not accept the treatment plan offered by Professor Platell.

In respect of pre-operative chemotherapy and radiotherapy the deceased, together with her partner

Dr Dingle, who I am convinced was an active contributor to the decision making process, were reluctant from the outset. In the case of the deceased her reluctance to undergo chemotherapy and radiotherapy resulted, at least in part, from the fact that Professor Platell had explained that such treatment would remove the possibility of her being able to have children in the future, something she very much wanted. In the case of Dr Dingle I am convinced that he was opposed to chemotherapy because of a past unfortunate experience in his own life and had for some time, and continued to have, a generally negative view of that form of treatment.

Initially after receiving the advice about the cancer the deceased and Dr Dingle were open to the possibility of surgical intervention, although they both looked into the possibility of alternative treatments.

In May 2003 the deceased underwent an MRI scan and on 14 May 2003 Professor Platell reviewed her condition in the context of a report on that scan. At that stage Professor Platell believed that the MRI did not clearly demonstrate a metastatic pattern and there was, for example, no tumour spread to the liver. At that stage Professor Platell still believed that the deceased had a realistic chance to survive her cancer and wished to look at a curative approach to her management.

Sadly in the period April and May 2003 it appears that the deceased decided to reject the mainstream treatment offered by Professor Platell and turned to homeopathic remedies offered by Mrs Scrayen. I am satisfied that Mrs Scrayen did convince the deceased that the homeopathy treatment which she was providing could provide a cure for her cancer.

In the months of April, May and June 2003 the deceased became increasingly reliant on Mrs Scrayen and by July 2003 she was in contact with her almost every single day. By this stage the relationship between the deceased and Mrs Scrayen had gone far beyond a normal patient/health provider relationship and the deceased had become increasingly dependent on Mrs Scrayen.

Dr Dingle, as the deceased's partner, would normally have been expected to have intervened at some stage by either bringing in outside help from the deceased's family or others or by acting to contain the relationship between Mrs Scrayen and the deceased. Unfortunately he did not do so.

It appears that Dr Dingle had previously consulted Mrs Scrayen for homeopathic treatment himself and as someone who had previously been very critical of mainstream medical practice, he was more reluctant to

intervene than would have been expected of a normal loving partner. Dr Dingle, in fact, became actively involved in the application of Mrs Scrayen's treatment regime by purchasing homeopathic remedies and isolating the deceased from outside intervention and the deceased could not have continued on the path of stand alone homeopathic treatment for as long as she did without his involvement.

The deceased's condition continued to deteriorate over July, August and September 2003 until by October 2003 she was close to death. At that stage she was suffering from a complete bowel obstruction and when she was finally taken to Fremantle Hospital on 12 October 2003 she would have been unlikely to have survived for more than 24 hours without surgery.

In spite of extreme surgery of the highest quality performed on 12 October 2003 by Professor Platell, it was not possible to remove all of the cancer and so the procedure was essentially a palliative operation, in that there was still residual tumour left in the pelvis.

After the surgery the deceased recovered to a significant extent, but the cancer was too advanced and on 25 August 2005 caused her death.

While the cause of death, rectal cancer, was a natural cause, the deceased's life might have been saved if she had

made different choices. As time passed from 31 October 2001, when she was reporting blood in her stool to Mrs Scrayen, until 12 October 2003, when she was taken to Fremantle Hospital and received emergency surgery, the deceased's cancer developed and spread and her chances of survival diminished from very good to being non-existent.

Apart from receiving limited and inadequate pain relief the deceased did not receive any medical treatment from a mainstream medical practitioner over the latter part of this period and relied on the treatments provided by Mrs Scrayen. Mrs Scrayen's influence on the deceased played a major part in her decision making which contributed to the loss. Dr Dingle, her partner, insofar as he supported and assisted with Mrs Scrayen's treatments and kept the deceased away from outside influences, contributed to that loss of a chance of survival. Ultimately, however, the decisions were those of the deceased, sadly those decisions were to a large extent based on misinformation.

During the period in 2003 while the deceased was relying on the treatment provided by Mrs Scrayen, not only did she lose whatever chances of life she had, she suffered extreme and unnecessary pain. Evidence at the inquest was to the effect that had surgery been performed earlier much of that gross pain would have been avoided.

This situation was made even worse by the fact that Mrs Scrayen's advice to the deceased was that she should avoid or take a minimum of pain reducing medications. The deceased accepted this advice and only reluctantly used minimal analgesia.

I find that the death arose by way of natural causes but in the circumstances described above.

COMMENTS ON PUBLIC HEALTH AND SAFETY ISSUES

The *Coroners Act 1996* provides that a coroner may comment on any matter connected with the death including public health or safety or the administration of justice (section 25). The Act also provides that a coroner may refer evidence to a disciplinary body (section 50) or may report to the Director of Public Prosecutions or the Commissioner of Police if the coroner believes that an indictable or simple offence has been committed in connection with a death (section 27(5)).

There is no power for a Coroner to report a breach of the *Fair Trading Act 1987* to the Fair Trading Commissioner as suggested in the submissions filed on behalf of the deceased's family. In any event the focus of the inquest has not been on any contraventions of the *Fair Trading Act 1987*, but rather the circumstances surrounding the death

and I do not consider that it is a function of a coroner to explore possible breaches of such Acts.

INFORMED CONSENT

This case has highlighted the importance of patients suffering from cancer making informed, sound decisions in relation to their treatment. In this case the deceased paid a terrible price for poor decision making.

Unfortunately the deceased was surrounded by misinformation and poor science. Although her treating surgeon and mainstream general practitioner provided clear and reliable information, she received mixed messages from a number of different sources which caused her to initially delay necessary surgery and ultimately decide not to have surgery until it was too late.

ALTERNATIVE MEDICINE PRACTITIONERS

In her decision making the deceased placed great reliance on Mrs Scrayen who represented to her that she could treat cancer by homeopathy. While I accept the evidence of Sylvia Neubacher to the effect that making such a representation went beyond the Australian Homeopathic Association Code of Conduct and that the Association has attempted to provide accountable structures to ensure that

homeopathic practitioners are qualified and have medical and professional standards which would provide a safeguard to consumers, I have serious reservations about any efforts to register or otherwise legitimise homeopathy or other similar alternative forms of medicine.

While I do not agree with the proposition that such alternative medical regimes should be outlawed, unless and until their supporters can provide appropriate and sufficient science base, any apparent legitimisation of these regimes could provide mixed messages for vulnerable and often desperate cancer suffers.

Evidence at the inquest revealed that homeopathic remedies are sold in pharmacies in Western Australia and homeopathic practitioners, such as Mrs Scrayen, have affiliation with private health insurance companies.

In a context where health costs are increasing at an alarming rate and private health insurance companies struggle to meet the full costs of procedures, medications and hospital beds, it is a matter of concern that funds which could be allocated to such fundamental health needs are being allocated to non-science based alternative medicine practitioners.

RECOMMENDATION NO. 1

I RECOMMEND THAT THE COMMONWEALTH AND STATE DEPARTMENTS OF HEALTH REVIEW THE LEGISLATIVE FRAMEWORK RELATING TO COMPLIMENTARY AND ALTERNATIVE MEDICINE PRACTITIONERS AND PRACTICES WITH A VIEW TO ENSURING THAT THERE ARE NO MIXED MESSAGES PROVIDED TO VULNERABLE PATIENTS AND THAT SCIENCE BASED MEDICINE AND ALTERNATIVE MEDICINE ARE TREATED DIFFERENTLY.

MEDICAL PRACTITIONERS PROVIDING COMPLIMENTARY AND ALTERNATIVE MEDICINE

In this case the choice for the deceased should have been a simple one between accepting the surgical option offered by Professor Platell or facing a painful death. That choice was made more difficult because the deceased was offered other "alternatives".

While doctors Barnes and Tabrizian both made it clear to the deceased that they favoured her undergoing surgery, both offered alternative treatments which added to the confusion of the situation.

It is noted that the Medical Board of Western Australia has prepared a draft document titled Complementary Alternative and Conventional Medicine which provides guidance to medical practitioners in relation to when they may recommend unproved or experimental treatments. It is important that this document be finalised, if this has not already been done, and communicated to medical practitioners.

RECOMMENDATION NO. 2

I RECOMMEND THAT THE MEDICAL BOARD OF WESTERN AUSTRALIA FINALISE ITS DOCUMENT COMPLEMENTARY ALTERNATIVE AND UNCONVENTIONAL MEDICINE IF IT HAS NOT ALREADY DONE SO AND TAKE STEPS TO ENSURE THAT THE DOCUMENT IS PROMULGATED TO THE PROFESSION AND COMPLIED WITH.

REFERENCE TO A DISCIPLINARY BODY – SECTION 50 OF THE CORONERS ACT 1996

Section 50 of the *Coroners Act 1996* provides that –

(1) A coroner may refer any evidence, information or matter which comes to the coroner's notice in carrying out the coroner's duties to a body having jurisdiction over a person carrying on a trade or professional if the evidence, information or matter –

(a) touches on the conduct of that person in relation to that trade or professional; and

(b) is, in the opinion of the coroner, of such a nature as might lead the body to inquire into or take any other step in respect of the conduct apparently disclosed by the evidence, information or matter so referred.

In this case it has been submitted that consideration should be given to a reference to the Medical Board of Western Australia in respect of the conduct of doctors William Barnes and Igor Tabrizian.

It is clear from the above section that there are a wide range of circumstances which could justify a coroner making such a referral and it is not necessary for a coroner to conclude that the actions of the person in question have caused or contributed to the death.

In this case neither Dr Barnes nor Dr Tabrizian caused or contributed to the death. I am satisfied that both doctors recommended that the deceased undergo surgery and that her decision to reject mainstream treatment until it was too late did not result from any advice or action on the part of

either doctor. I do, however, consider it appropriate to review the evidence received relating to the actions of the two doctors concerned in the context of the wideranging provisions of section 50 of the Act.

Dr William Barnes

As indicated in these reasons it is matter of concern that Dr Barnes offered the deceased intravenous carnivora and vitamin C treatment in circumstances where she was suffering from an aggressive form of cancer and required surgery. I am particularly concerned that Dr Barnes told the deceased that these treatments had the potential to stop her tumour growing.

I note that while Dr Barnes provided the court with articles which he claimed supported his approach, Oncologist Dr Van Hazel stated, "There has never been any reliable evidence that such treatment slows the growth of cancer"[76].

Even if there was some evidence that carnivora and vitamin C could have some effect on tumour growth in certain circumstances, I consider it most unfortunate that such relatively unproven treatments were recommended at a time when proven treatments could have been used and were urgently required.

[76] t.1066

While it was not explored in any detail at the inquest, I am also concerned by the fact that Dr Barnes' medical practice provided and prescribed homeopathic medications.

In the context of the above evidence I do propose to refer evidence relating to Dr Barnes to the Medical Board of Western Australia.

Dr Igor Tabrizian

In the case of Dr Tabrizian I am satisfied that he did provide the deceased with at least some nutritional advice and may have performed hair analysis as claimed by her.

I am concerned that Dr Tabrizian saw the deceased, an extremely unwell patient, and did not take adequate notes of the attendances. I am particularly concerned that Dr Tabrizian does not appear to have requested access to the deceased's colonoscopy results or MRI scan. He did not take a detailed history from her or examine her or even suggest adequate monitoring. He did not ask questions about other doctors whom she may have been seeing or make efforts to contact them.

As stated earlier in these reasons, I am concerned that Dr Tabrizian does not appear to have been acting as a doctor normally would in his treatment of the deceased and

I have some difficulty understanding in what capacity he considered that he was seeing her.

I note that Dr Tabrizian has published books disparaging of mainstream medical practice and particularly of the conventional approach to cancer treatment and that he wrote a reference on the back of Dr Dingle's book which contained a chapter disparaging about conventional medical approaches to cancer.

In the context of Dr Tabrizian's known views, his failure to examine the deceased when she visited him is concerning.

In the above context I do propose to refer evidence relating to the conduct of Dr Tabrizian to the Medical Board of Western Australia.

A N HOPE
STATE CORONER
30 July 2010