

## CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY

**Case Title:** AN INQUEST INTO THE DEATH OF  
MARK ANTHONY O'BRIEN

**Citation:** [2019] ACTCD 07

**Date of Findings:** 20 June 2019

**Before:** R.M COOK

**Decision:**

- 1 Mr Mark Anthony O'Brien died at Unit 3 of 1 Dawes Street GRIFFITH in the Australian Capital Territory between 6.00 pm on Sunday 22 May 2016 and 11.45 am on Monday 23 May 2016;
- 2 The manner and cause of Mark Anthony O'Brien's death is '*Heroin toxicity*'; and
- 3 That, pursuant to s 52(4)(a)(i) of the *Coroners Act 1997*, no matter of public safety is found to arise in connection with this inquest.

**File Number:** CD 118 of 2016

### The Deceased

1. Mr Mark Anthony O'Brien born on 2 August 1957, in Campsie NSW died in the ACT between 6.00pm on 22 May 2016 and 11.45am 23 May 2016.
2. The deceased was age 58 years and in poor physical and mental health at the time of his death.
3. Mr Mark Anthony O'Brien had 2 brothers and one sister. Mr O'Brien moved to Canberra and completed secondary education at Belconnen High School. He worked in the public service and as a delivery driver for short periods of time until 1986<sup>1</sup>. For most of his adult life Mr O'Brien was unemployed.
4. Mr O'Brien and his mother lived together until Mrs O'Brien's death in late 2014.

---

<sup>1</sup> From Report of Dr George, chronology page 1

5. Mr O'Brien then lived alone in an ACT Housing property until the date of his death. At the time of his death Mr O'Brien's next of kin was his sister Ms Joanne Theresa Cain. Ms Cain is a resident of the ACT and was informed of her brother's death at about 5:45 PM on 23 May 2016 by the AFP.
6. Mr O'Brien had an older brother Peter O'Brien with whom he had been estranged for some time and a younger brother Geoffrey O'Brien who passed away in 2004.

**Brief History:**

7. Ms Cain advised that the deceased suffered chronic back pain probably caused by Scheuermann's disease. This disease it seems is a developmental disorder of the spine affecting the vertebrae of the upper back. The effect of the disease, is that it can cause pain around the thoracic spine which can be made worse by physical activity.
8. Ms Cain advised that after Mr O'Brien's mother had died her brother's physical and mental health deteriorated. Ms Cain advised that she had last seen her brother eight months prior to his death and at the time her brother looked very unwell. Ms Cain recalled that her brother looked 20 years older than his age, he was dishevelled with vomit caked down the front of his jumper and had recently been admitted to The Canberra Hospital ("TCH").

**Drug use**

9. Mr O'Brien appears to have commenced using heroin in his early 20's. He reported to his doctors that his heroin use ceased around the time that he was diagnosed with a chronic back pain for which he was prescribed: MS Contin, and other opiate based medications.<sup>2</sup> He self-reported further use of heroin during preparation of a court alcohol and drug assessment service report for the ACT Magistrates Court in 2006<sup>3</sup>
10. From the early 90's until his death in 2016 Mr O'Brien struggled with prescription drug abuse issues and in particular opiate based medications (including MS Contin

---

<sup>2</sup> Chronology page 1

<sup>3</sup> Chronology page 10

and Endone) prescribed by his treating GPs<sup>4</sup> and doctors at the Pain Management Unit at ACT Health<sup>5</sup>.

11. Mr O'Brien also had a long standing prescription for benzodiazepines (particularly Valium and Mogadon) and regularly exceeded his prescribed usage of both types of drug.
12. Mr O'Brien went on and off the methadone program for a number of years, between 1996 and 2001, and from 2005 -2007. He was last assessed for the program in 2014 for pain management.

### **Mental Health**

13. Over the years Mr O'Brien was generally observed by his treating psychiatrists to *'lack insight into his mental health issues'*<sup>6</sup> with a tendency to refuse continued psychotropic medications.
14. In 2003 / 2004 Mr O'Brien's mental health deteriorated and his involvement with ACT Mental Health ("ACTMH") became regular. He was diagnosed with Paranoid Schizophrenia in around 2004. In 2005 Mr O'Brien's mother and neighbours contacted ACTMH regularly regarding his persecutory delusions (about his neighbours thinking he was a paedophile) and drug seeking behaviours (including taking and injecting his mother's medication).
15. In August 2005, Mr O'Brien was charged with two robbery offences (a few days apart) for taking prescription medication from pharmacies. After the latter of the two offences he overdosed on prescription medication and was taken to Hospital. He was then charged and remanded in the Belconnen Remand Centre ("BRC"). Mr O'Brien was released from custody (spent at BRC and Symonston) in April 2007.
16. During his remand at the BRC, Mr O'Brien was placed on a Psychiatric Treatment Order ("PTO")<sup>7</sup> by the ACT Civil and Administrative Tribunal (ACAT) in May 2006

---

<sup>4</sup> Dr Moulding , Dr Wessell (KMP subpoena material),

<sup>5</sup> Dr Tadashi,

<sup>6</sup> General comment made by a number of treating professional over time. ACT MH

<sup>7</sup> ACT MH folio 1, chronology page 11

this remained in place until 2010. During this period Mr O'Brien was given depot injections of anti-psychotic medication on a fortnightly basis (Resipridol Consta).

17. After the expiration of his PTO Mr O'Brien did take anti-psychotic medication voluntarily for a period of time moving from Resipridone in to monthly injections of Paliperdione in 2012. He ceased taking anti-psychotic medication in late 2013 when his treating doctors noted that they could not give it to him in circumstances where he was not consenting, not on an order, and possibly lacking capacity.
18. In late 2014 Mr O'Brien's mother died and not long afterwards Mr O'Brien was found with a severe laceration to his throat and was admitted to TCH. He was again placed on a PTO on 15 December 2014 for a period of 6 months (with review by ACAT) and was extended each 6 months until Mr O'Brien's death.
19. On 5 March 2016 Mr O'Brien was admitted to TCH due to a possible overdose suicide attempt and medical issues arising from lack of self-care. He was discharged on 21 March.
20. On 29 March 2016 Mr O'Brien he was found by his housing manager covered in his own faeces. TCH records indicate that Mr O'Brien was considered "*unable to live independently due to medical issues including falls risk, medication safety, he has shown diminished capacity for self-care. Previous apartment has been in squalor (i.e. faeces all over the apartment).*" He was kept in the MAPU for treatment of Sepsis and then transferred to the Adult Mental Health Unit ("AMHU") on 4 April 2016.
21. Mr O'Brien was discharged from the Adult Mental Health Unit at TCH into the Adult Step Up Step Down program ("ASUSD") a rehabilitation program for people with mental health issues<sup>8</sup> on 5 May 2016<sup>9</sup>. He discharged himself from the program against advice on 17 May 2016<sup>10</sup> when he returned to live in his ACT Housing unit. At the time he continued to take benzodiazepines (after receiving scripts for Valium and Mogadon from Dr Wessell on 11 May 2016) but had no current prescription for Opioid medications (Ms Contin and Endone).

---

<sup>8</sup> Statement of DLSC Shaw page 3, Coronial brief tab 1, TCH notes, chronology p 45

<sup>9</sup> TCH Discharge Summary, chronology page 47

<sup>10</sup>ASUSD participant notes p1, chronology page 49

22. On 22 May 2016 Mr O'Brien and Mr Jye McGrath took Heroin together.<sup>11</sup> Mr McGrath reported observing Mr O'Brien inject a quarter gram of Heroin into his own leg. In his statement to the informant Mr McGrath noted that "*Mark appeared to have overdosed on heroin – Mark became groggy, slipping in and out of consciousness and breathing irregularly. Mr McGrath sat with Mark on the couch trying to keep him awake*". Mr McGrath then spent a number of hours with Mr O'Brien before satisfying himself that Mr O'Brien appeared to have 'sobered up'. He left Mr O'Brien's home at about 6.00pm.
23. The following morning Mr McGrath attended Mr O'Brien's unit at 11.15am and was unable to raise Mr O'Brien. Mr McGrath returned at approximately 11.45am and was again unable to raise Mr O'Brien so he entered the premises. He saw the internal door to the kitchen was closed so he tried to open it. There was something against the door in the kitchen preventing it from opening. Mr McGrath pushed the kitchen door open far enough to look through into the kitchen. He observed Mr O'Brien lying on the floor in the kitchen behind the door. Mr O'Brien was wearing the same clothes and shoes that he had been wearing when Mr McGrath had seen him the previous evening.
24. Mr McGrath then telephoned the ACT Ambulance Service ("ACTAS"), who attended and observed Mr O'Brien deceased in kitchen of his unit. At around 11.58 am on 23 May 2016 ACTAS contacted the AFP to advise they had been contacted by a male who had located the deceased. AFP Forensic Officers arrived shortly thereafter and conducted a search of the premises and located Mr O'Brien's body. Mr O'Brien was pronounced life extinct by Forensic Medical Officer Graeme Thompson at 2.55 pm on 23 May 2016.
25. FMO Thompson declared Mr O'Brien died at Unit 3 of 1 Dawes Street, Griffith in the Australian Capital Territory between 6.00 pm on Sunday 22 May 2016 and 11.45am on Monday 23 May 2016.

## **Consideration**

---

<sup>11</sup> Statement of DLSC Shaw page 3

26. A Coroner is required to hold an inquest into the manner and cause of death of a person who dies and a doctor has not given a certificate about the cause of death: see section 13(1)(d) of the *Coroners Act 1997* (ACT) (“the Act”) as it was in force at the time.
27. At the time of his death, Mr O’Brien was subject to a Psychiatric Treatment Order under Division 4.4 of the *Mental Health (Treatment and Care) Act 1994*, which had been made on 10 December 2015 and granted for a period of six months.
28. Accordingly, Mr O’Brien’s death falls within the definition of “Death in Custody” as set out at section 3C of the Act. As such, pursuant to section 34A(2) the Coroner must not dispense with a hearing in relation to his death.
29. Pursuant to section 74 of the Act I am required to include in the record of proceedings findings about the quality of care, treatment and supervision of the deceased should they, on balance of probabilities, be found to have contributed to the cause of Mr O’Brien’s death.
30. Subsection 52(1) provides relevantly that a Coroner holding an inquest must find, if possible
  - a. The identity of the deceased;
  - b. When and where the death happened; and
  - c. The manner and cause of death.
31. I am satisfied that the coronial brief which I mark as Exhibit 1, provides the following information:
  - a. Mr Mark Anthony O’Brien died between 6.00pm on Sunday, 22 May 2016 and 11.45am on Monday, 23 May 2016.
  - b. The location of his death was: Unit 1 of 3 Dawes Street Griffith in the ACT.
  - c. Mr O’Brien was pronounced life extinct by Forensic Medical Officer Graeme Thompson at 2.55pm on 23 May 2016.
  - d. No Doctor has issued a Death Certificate.

32. From the evidence of the police and medical officers who attended and examined the body at the location of death, there was nothing to indicate the death occurred in suspicious circumstances.<sup>12</sup>
33. Post mortem bloods were taken from Mr O'Brien for toxicological testing. The results of the testing indicate the presence of morphine in the blood at levels that could be lethal.
34. A post mortem examination conducted on 21 August 2016 Dr Sanjiv Jain contains Dr Jain's opinion that based on the presence of the metabolite 6 Monoacetylmorphine (6-MAM) in blood samples taken from Mr O'Brien during the post mortem examination. In Dr Jain's professional opinion the manner and cause of Mr O'Brien's direct cause death was Heroin Toxicity.<sup>13</sup>

## **Hearing - Issues for consideration**

### **Public Safety**

35. Paragraph 52(4)(a) provides that a Coroner must state whether a matter of public safety is found to arise in connection with an inquest, and if so, a Coroner must comment on that matter:

### **Quality of treatment and care:**

36. There are number of issues to consider in relation to the care and treatment Mr O'Brien received in the time leading up to his death. These include (a) the management of his mental health (b) management of his prescription drug addiction and (c) the communication and coordination between the professionals caring for Mr O'Brien including his GP, the Pain Management Unit, and Mental Health Services.

### **A. Mental Health**

37. At the time of his death Mr O'Brien was on a Psychiatric Treatment Order. The next review of the Order was schedule to occur on 2 June 2016. His treating team did not note Mr O'Brien presenting as a risk to himself or others when he was reviewed, and

---

<sup>12</sup> Australian Federal Police, Forensic Examination case note, Coronial brief tab 2

<sup>13</sup> Post Mortem report Professor Sanjiv Jain dated 21 August 2016, Coronial brief tab 10 pp 2, 8-12, ACTGAL Toxicology report, Coronial brief tab 9.

it appears that the depot injections of anti-psychotic medication had reduced the symptoms of his illness including, thoughts of self-harm, or persecutory delusions.

38. Throughout his stay at ASUSD (March-May 2016) Mr O'Brien was regularly reviewed by psychiatric registrar Nadine Fox and was managed by Tracey Crowe from Woden Mental Health. During that time his mental state was assessed as "*stable, without psychosis*" but, "*at risk of deterioration*" and he was not noted as being at risk of self-harm. He was assessed as being "*unable to live independently due to medical issues including falls risk, medication safety, he has shown diminished capacity for self-care*". These issues were the focus of his referral to the ASUSD on 5 May 2016.
39. While largely historical the medical management of Mr O'Brien's mental health appears appropriate in all the circumstances at the time and preceding his death.

#### **Polypharmacy / drug abuse**

40. Mr O'Brien's significant and long term issue with the abuse of prescription medication, in particular opioid medication, was well documented. He had been taking MS Contin, OxyContin, Oxycodone, and other opioid based prescription medication for over 20 years at the time of his death. He was also well documented as over using prescription benzodiazepines. His treating doctors were unable to effectively engage him in a process to reduce or properly manage his abuse of those medications which were prescribed for his chronic back pain. The analysis and concern regarding this abuse was long standing and consistent:

- a. In 1997 Dr Mazengarb (TCH Pain Management) was of the opinion "*that dependence is a greater problem than pain management.*"<sup>14</sup>
- b. In 2004 Dr Moulding described Mr O'Brien as "*manipulative and drug seeking*".<sup>15</sup>
- c. In 2005 Mr O'Brien's opioids prescription was altered and prescription reduced. Within 2 months he committed a criminal offence based on drug seeking behaviours.<sup>16</sup>

---

<sup>14</sup> Dr Mazengarb chronology page 2

<sup>15</sup> Dr Moulding chronology 4

- d. In 2007 Danny Farrow noted that it *“May be difficult to curtail Mark’s drug seeking behaviours as they have become entrenched over many years”*.<sup>17</sup>
- e. In 2013 Dr Wessell wrote *“When I first saw him, he was taking 4 times 11 Mg MS Contin daily. Battled him down over a couple of years to 3 daily and have struggled to keep him within that limit. He also takes up to 8 Endone and 4 Valium.*
- f. On 5 March 2016 Mr O’Brien was admitted to TCH after an alleged overdose of his MS Contin.<sup>18</sup>
- g. On 17 May 2016 Mr O’Brien self-discharged from the ASUSD because *“he didn’t like people interfering with his medications”*.<sup>19</sup>

41. Mr O’Brien’s last prescription of MS Contin and Endone was on 31 December 2015 from Dr Wessel. Dr Wessel authority to prescribe these medications (given by Chief Medical officer) expired on 17 March 2016.

42. During his penultimate admission to TCH, between 5 March and 22 March 2016, Mr O’Brien was withdrawn from his MS Contin (given MS Contin on 5 March then medication ceased). TCH staff continued to monitor his progress during this time and he did not display symptoms of withdrawal between 5 and 11 March. During that period Mr O’Brien refused to accept a referral to Drug and Alcohol Services at TCH.

43. On 11 March 2016, Drug and Alcohol spoke to Mr O’Brien and he denied substance abuse and indicated that he wanted to continue to take MS Contin. No Withdrawal symptoms were noted.

44. A referral to Pain Management was suggested after a successful withdrawal from opiate medication in the hospital, however he refused that referral confirming that he wanted to maintain his previous prescription of MS Contin. At one point in March he

---

<sup>16</sup> ACT MH Folio 1, and chronology pages 5 and 6

<sup>17</sup>Danny Farrow- Aug 2007 ACT health records- folio 1 of 5: Aug -Dec , chronology page 16

<sup>18</sup> TCH Medical records volume 1 of 2 page 1, chronology page 39

<sup>19</sup> ACT Health MH notes folio 2 of 5, chronology page 49

went AWOL from the hospital and attended a pharmacy in an attempt to obtain medication but was refused.

45. On 21 March the drug and alcohol unit and Dr Wessell were both contacted by TCH Staff. It was agreed that in circumstances where it seemed Mr O'Brien had been successfully withdrawn from MS Contin and was managing on Endone that he should not have his regular prescription re-introduced on discharge other than daily release of Endone. Dr Wessell advised that he should be seen by Pain Management and Mr O'Brien was offered the opportunity to have such an appointment made on 21 March which he declined. He then discharged himself against medical advice on 22 March.
46. On 23 March 2016 Dr Wessel wrote to both Pain Management and the Manuka Pharmacy. She requested that Pain Management make an appointment for Mr O'Brien and advised the pharmacy that he should continue to receive only daily dose of Endone and to limit his MS Contin from the remainder of the final prescription made in December 2015.
47. Mr O'Brien was again admitted to TCH on 30 March 2016 and he remained on the same treatment without MS Contin until he self-discharged on 17 May 2016. Although he had been taken off Benzo's during his previous admission Mr O'Brien was prescribed a further 50 valium by Dr Wessell on 11 May. On that same date she wrote to Pain Management and asked them to make an urgent appointment with Mr O'Brien who she noted was staying at ASUSD.
48. On 16 May 2016 workers from ASUSD met with Mr O'Brien to discuss the reasons for withholding medication (benzo) that day (as he seemed over sedated) and it was this discussion that seemed to be the catalyst for his self-discharge. Those workers ensured that Mr O'Brien had access only to enough medications until follow up the following day to prevent possible overdose. Mr O'Brien was scheduled to see Dr Wessell on 18 May 2016 but did not attend for that appointment.
49. It is clear that the cessation of Mr O'Brien's opioid treatment was an attempt to address Mr O'Brien's addiction to prescription drugs which had manifested it over many years. The successful reduction of his usage whilst in hospital was then

followed up by the referral to ASUSD for rehabilitation before being returned to the community.

50. It is apparent that Mr O'Brien decided to discharge himself early against advice, and once back in the community that he made no efforts to engage with services to have his medication reviewed or reassessed.
51. In the circumstances, given his history, Mr O'Brien's treating doctors may have formed the view that there was a risk that he would engage in drug seeking behaviour, and how that might be done, i.e. illicitly, would, it seems to me, have been known by the medical teams in a general sense, however it was not, I am satisfied, capable of translating into a finding that they would know or could at least assume to know that Mr O'Brien would in fact pursue heroin and consume it in that manner.
52. From the evidence it is clear that the medical management of Mr O'Brien's drug dependency was challenging for medical practitioners dealing with him. Mr O'Brien's behaviour demonstrated a continued pattern of drug seeking/abusing behaviour that a number of practitioners attempted to address over time without success. And as a consequence while his behaviour contributed directly to the manner and cause of his own death the engagement of medical service providers and their dealing with Mr O'Brien does not causally link their actions to the manner and cause of his death so as to contribute in an adverse way to the manner and cause of Mr O'Brien's death.

### **Public Safety**

53. The final issue to consider is whether any issues of public safety arise from the manner and cause of Mr O'Brien's death. The extent and the duration of the prescription of opiate based medication to Mr O'Brien in a preliminary sense raises concerns for me in the extent of prescribed medication of that opiate based medication.
54. I am not satisfied the evidence before me reaches the standard required to the extent that it would enable me to make an adverse finding that the prescription regime

underpinning the provision of the opiates to Mr O'Brien by medical providers contributed to the cause of death.

55. However, having said that, a suggestion that technology might be introduced to track pharmacotherapy treatment of a person so as to avoid over prescription would be a worthwhile aim particularly where the person is intent on seeking more and more of the drug that is being prescribed to them from various sources.

56. I find that Mr O'Brien's death was caused by a heroin overdose after Mr O'Brien self-discharged from his rehabilitation program. And that the addressing by medical and drug service providers of appropriate medication to Mr O'Brien and combined efforts to reduce his access to and reliance upon such medication leads me to conclude that in an overall sense, the pharmacotherapy treatment provided could be reasonably linked to the manner and cause of death having regard to his own actions after self-discharging.

57. Accordingly, I am satisfied that no matters of public safety arise that would attract either a recommendation or an adverse finding.

**Conclusion:**

58. Based on my review of the evidence available I am satisfied that the manner and cause of Mr O'Brien's death is clearly established as is expressed in the opinion of Dr Jain and Toxicology report prepared by ACTGAL. Further, that there were no suspicious circumstances relating to the manner and cause of death being heroin toxicity.

59. That concludes my inquest into the manner and cause of death of Mr O'Brien.

**DATED 20 June 2019**

**R.M. COOK  
CORONER**