

CORONERS ACT, 2003



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 12th, 13th, 14th and 18th days of December 2007, and the 7th day of February 2008, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Gladys Ruth Wells.

The said Court finds that Gladys Ruth Wells aged 71 years, late of Brighton Aged Care, 580 Brighton Road, Brighton died at Brighton Aged Care, 580 Brighton Road, Brighton, South Australia on the 18th day of July 2007 as a result of an undetermined cause. The said Court finds that the circumstances of her death were as follows:

1. Introduction and reason for Inquest

1.1. Mrs Wells was found dead in her bed in the Brighton Aged Care Nursing Home (hereinafter referred to as Brighton Nursing Home) on the morning of 18 July 2007. She was found by carers working at the home Rhiana Brown and Crystal McKendrick both of whom gave evidence at the Inquest. Registered Nurse Pamela Cockerell was called by Ms Brown to confirm that Mrs Wells had died. This was at approximately 8:30 am on that day. Some time later that day, at around 2:00 pm Dr Jagdish Saraf attended at Brighton Nursing Home and certified Mrs Wells' death. Mrs Wells' Brighton Nursing Home casenotes were admitted as Exhibit C2b and there is an entry apparently made by Dr Saraf on 18 July 2007 stating, "Death certified. Found dead in bed." A nursing note in the same record is as follows:

'18.7.07 Respirations ceased 0810 hrs. Dr Saraf advised – he will be in later to certify death. Husband advised. He will contact facility later with funeral arrangements. Signed P. Cockerell'

- 1.2. Subsequently Dr Jagdish Saraf completed a “First Medical Certificate” purportedly pursuant to the Regulations under Cremation Act. In fact the form signed by Dr Saraf was prescribed under the Cremation Act 1891 which was repealed in 2000 – that is seven years ago – by the Cremation Act 2001. Regulations under the 2000 Act provide for a first medical certificate which is similar to although not identical to the form filled out by Dr Saraf. This is the first in a series of irregularities which will be presently described. Dr Saraf gave the cause of death as “cardiac arrest”. He incorrectly gave the date of death as 17 July 2007 rather than 18 July 2007 and nominated a time of death that does not correspond with the Brighton Nursing Home notes.
- 1.3. On his own evidence Dr Saraf took the first medical certificate home and then requested that his wife sign a second medical certificate (also prescribed under the repealed Act and Regulations and therefore wrong). His wife is a medical practitioner. Her name is Dr Madhu Saraf. Dr Jagdish Saraf said that he filled out the substantive parts of the second medical certificate including answers to the questions whether his wife had ever professionally attended the deceased, whether she had read and considered the certificate of the first medical practitioner, and whether she was satisfied that the deceased died from natural causes. To these two last mentioned questions he wrote the word “yes” in the appropriate place. The form was then signed over the kitchen table by Dr Madhu Saraf. Mrs Wells was cremated on 24 July 2007.
- 1.4. On 27 July 2007 Senior Constable Andrew Bull of Sturt Criminal Investigation Branch (CIB) became aware of Mrs Wells’ death. In his statement which was admitted as Exhibit C2a he said that this information came to him because an employee of the Brighton Nursing Home had raised some concerns regarding how the death of Mrs Wells was handled and that employee contacted the Commonwealth Department of Health and Ageing which, in turn, contacted South Australia Police. The information received by police was that an employee of Brighton Nursing Home, by the name of Sue Ambagtsheer had contacted the Department of Health and Ageing to say that she been approached by Crystal McKendrick who stated that she had found Mrs Wells deceased on the morning of 18 July 2007. According to Senior Constable Bull’s statement, Ms Ambagtsheer had claimed that Ms McKendrick had told her that Mrs Wells had fallen out of bed and was partially hanging by the bed pole and had

bruising around her chin. On 27 July 2007 Senior Constable Bull notified the Office of the State Coroner and commenced a coronial investigation into the matter.

2. Ms Rhiana Brown

2.1. Ms Brown is a carer employed at Brighton Nursing Home. She gave evidence at the Inquest and made a statement which was admitted as Exhibit C7. Ms Brown is 25 years of age. She had done some nursing training. Although she had not been present when a person had died in the nursing home she had, in the course of her nursing training, been exposed to the death of a person. In her statement¹ she described entering Mrs Wells' room on the morning of 18 July 2007 with Crystal McKendrick and seeing that Mrs Wells "didn't look right". Ms Brown could see Mrs Wells' back and the back of her head. She said she didn't go around to the side of the bed, but it looked to Ms Brown as if Mrs Wells was kneeling or on all fours. Ms Brown also observed two or three red marks down one side of Mrs Wells' neck, she thought on the left side but could not be sure. When she gave evidence, Ms Brown stated that she now had reservations about her statement that Mrs Wells might have been on her hands and knees. She said she had such reservations because she never went around to the other side of the bed and that Mrs Wells had covers over her. So it was hard for Ms Brown to see how she was lying. She confirmed in her oral evidence that it looked to her like Mrs Wells' head was leaning against the bed pole. At this point I should explain that the bed pole is a piece of equipment used within the nursing home and is, as its name implies, a pole which stands vertically by each side of the bed at approximately the chest or shoulder level of a person lying in a normal position in the bed. It is used for residents to grasp onto to adjust their position within the bed. I should also mention that Mrs Wells' bed was what was described as a "low" bed such that it would have been less than 12 inches above floor level, and that on the floor on the side of the bed on which Mrs Wells was found there was a blue foam mattress to offer protection should she roll off her bed.

2.2. Counsel for Brighton Nursing Home provided some photographs which were admitted as Exhibit C4. These photographs were taken in a room of Brighton Nursing Home similar in layout to that occupied by Mrs Wells and they show a bed with bed

¹ Exhibit C7

poles fitted which is a low bed similar to that occupied by Mrs Wells. In the photographs, Ms Cockerell can be seen lying on the bed in a position which is said, by Counsel for Brighton Nursing Home, to be similar to that in which Mrs Wells was found. In the result, these photographs have not been particularly helpful because they are based on an interpretation of eyewitness accounts to which I have access. I am in as good a position to interpret those accounts as the photographer. However, the photographs have been useful in showing the sort of bed and bed pole that was involved, and the room layout.

- 2.3. Ms Brown was shown a copy of the photographs and asked whether they assisted her in describing the position of Mrs Wells. Her response was “not really, not really”². Ms Brown said that Mrs Wells’ head was resting against the bed pole:

‘... her head was against the bed pole and, yes, I’m not sure but it just didn’t look right, it just wasn’t a natural position to lie in and, yes, that’s pretty much what I mean by that. Yes, it just didn’t look right.’³

- 2.4. Ms Brown stayed near the door about a metre back from the foot of the bed on the opposite side of the bed to that on which Mrs Wells was found. Ms McKendrick went around to the side of the bed on which Mrs Wells was found and said that she was dead. Ms Brown said that when Ms Cockerell came into the room, having been summoned by Ms Brown, Ms Cockerell said that they should place Mrs Wells back onto the bed and this they did, placing her on her back. Ms Brown said that at this point she observed a red mark on one of Mrs Wells’ knees which looked fresh as if it had just happened⁴. Ms Brown said that she also observed two or three red marks down one side of Mrs Wells’ neck and she indicated that part of the neck approximately half way between the lower part of the ear and the collarbone and in line with the ear⁵. She confirmed that she remains uncertain as to which side of the neck this mark was on.
- 2.5. Ms Brown said in evidence that when she found Mrs Wells she thought her death may have had something to do with the bed pole and she confirmed that she remained of

² Transcript, page 42

³ Transcript, page 43

⁴ Transcript, page 45

⁵ Transcript, page 46

that view when giving evidence⁶. As to the marks upon Mrs Wells' neck she described them as appearing to be like fingermarks⁷. Ms Brown said that she had never had cause to find Mrs Wells in an unusual position like this before and described the position as “strange”⁸.

3. Ms Crystal McKendrick

Ms McKendrick was a carer at Brighton Nursing Home. She gave evidence at the Inquest and also provided a statement which was admitted as Exhibit C8. She confirmed finding Mrs Wells with Ms Brown. In her statement Ms McKendrick said that Mrs Wells was lying on her left side facing the window. She said that the foot end of the mattress on the bed had moved slightly away from the window and there was approximately ten centimetres of bed base exposed at the foot end of the bed. She said that it looked like Mrs Wells had moved down towards the foot end of the bed and her legs were resting on the base of the bed next to the mattress. She said that the right side of Mrs Wells' jaw near her chin was resting against the bed pole on the window side of the bed. In her statement she said “Her head was being supported by the help bar keeping it from dropping down”. In her statement she said that there was a small bruise on the right side of Mrs Wells' jaw at the same spot that was resting on the bed pole when she first saw her. She also observed a scratch on the side of Mrs Wells' neck. This observation was similar to that made by Ms Brown. Ms McKendrick confirmed that Ms Cockerell came in and checked Mrs Wells' pulse and confirmed that she was deceased. With Ms Cockerell she and another carer repositioned Mrs Wells in her bed⁹. Ms McKendrick was asked whether there was anything about the position in which Mrs Wells was found that suggested to Ms McKendrick that she had asphyxiated and Ms McKendrick replied in the negative¹⁰. On the other hand, when asked if she regarded the position in which she had found Mrs Wells as “slightly odd” she replied:

‘It was not a position that we would leave a resident in.’¹¹

⁶ Transcript, page 47

⁷ Transcript, page 47

⁸ Transcript, page 56

⁹ Transcript, page 66

¹⁰ Transcript, page 66

¹¹ Transcript, page 72

4. **Ms Pamela Cockerell**

- 4.1. Ms Cockerell is a Registered Nurse employed by the Brighton Nursing Home. She made a statement which was admitted as Exhibit C9 and gave evidence. She said that she was informed of Mrs Wells' death by Ms Brown and went straight to Mrs Wells' room. She said that on entering the room she saw Ms McKendrick kneeling down on the window side of the bed supporting Mrs Wells by cradling Mrs Wells' head¹². Ms Cockerell then described Mrs Wells' head position by reference to the photographs¹³ to which I have already made reference. Ms Cockerell described the photograph of herself as showing the position of Mrs Wells' head as being such that the chin was just touching the pole and this she copied for the purposes of the photographs. She said that was the impression she had of Mrs Wells' position¹⁴.
- 4.2. Ms Cockerell stated that this was the position in which she believed Mrs Wells had been found and did not think that Mrs Wells had been moved by Ms McKendrick or anybody else before she got there¹⁵. However, this is logically impossible having regard to Ms Cockerell's own evidence that when she first saw Mrs Wells, Ms McKendrick was cradling Mrs Wells' head and supporting it. It must follow from that account that Mrs Wells' position had already been affected and altered by Ms McKendrick before Ms Cockerell arrived. So Ms Cockerell's account and her depiction of the position in which Mrs Wells was found in the photographs is not necessarily an accurate depiction of the position in which Mrs Wells was found by Ms Brown and Ms McKendrick.
- 4.3. Ms Cockerell said that her initial assumption was that Mrs Wells had adopted this position in the course of dying¹⁶. Ms Cockerell was asked by Counsel for Brighton Nursing Home whether, against the background of that assumption she formed the opinion that there was nothing unusual in the position in which Mrs Wells was found¹⁷, and therefore no requirement to report the death to the State Coroner¹⁸. She agreed with these propositions. In my opinion that evidence is quite revealing.

¹² Transcript, page 77

¹³ Exhibit C4

¹⁴ Transcript, page 78

¹⁵ Transcript, page 79

¹⁶ Transcript, page 80

¹⁷ Transcript, pages 80-81

¹⁸ Transcript, page 81

Ms Cockerell formed the view that Mrs Wells came to rest in the unusual position she did as a consequence of the terminal event and therefore dismissed the possibility that the position itself may have had something to do with the terminal event itself. By assuming that she was dying or dead before she reached that unusual position, one rules out the possibility that the position itself may have had some causal link to her death. Thus on Ms Cockerell's initial view, and the view she has maintained since, the position was a consequence of the manner of death; and the manner of death was not a consequence of the position itself.

- 4.4. It was Ms Cockerell who contacted Dr Saraf that morning to advise him of Mrs Wells' death. She could not remember exactly what she told Dr Saraf over the telephone beyond the fact that Mrs Wells was dead and requested that he come in and certify her death. She could not recall whether Dr Saraf asked her any questions.

5. Conclusion as to observations made by first to find

- 5.1. Both Ms Brown and Ms McKendrick gave evidence of finding marks on the side of Mrs Wells' neck that would have been closest to the bed pole. Ms Brown thought that her death may have had something to do with the bed pole; she thought that there was something strange in the position she had been found in. She said the position did not look right and that it was not natural. On the other hand Ms McKendrick did not regard the position as indicative of asphyxiation but she did say that the position was not one that she would leave a resident in. This implies that she did not regard it as entirely normal. Furthermore on the evidence of Ms Cockerell, Ms McKendrick was supporting and cradling Mrs Wells' head which is further indicative of her head having been in an unusual position at rest.
- 5.2. The Coroners Act 2003 provides that a death is a reportable death if it is by unexpected, unnatural, unusual, violent or unknown cause. Section 28 of the Coroners Act provides that a person must, immediately after becoming aware of a death that is or *may be* a reportable death, notify the State Coroner of the death. Having regard to the evidence of Ms Brown and Ms McKendrick, it is my view that there was something unusual about the position in which Mrs Wells was found. Ms McKendrick refers to displacement of the mattress and Mrs Wells' feet being on the bed base. There is an involvement of the bed pole in some way. From this it

follows that Mrs Wells' death may have been "unusual" within the meaning of the definition. I am not suggesting that her death did in fact involve the bed pole – that can never be known given that Mrs Wells' body was cremated and no autopsy was performed. However, the evidence is such that her death may have been caused by the position in which she was found; there were sufficient unusual features about her position that the bed pole may have been involved in some way. In my opinion these matters alone mean that there was an obligation to report her death pursuant to section 28 of the Coroners Act 2003. In so finding, I acknowledge that the Court must not make any finding or suggestion of criminal or civil liability¹⁹. In my opinion, that prohibition does not prevent the Court from finding that a death may have been reportable.

6. Professor Roger Byard

6.1. Professor Byard gave evidence at the Inquest. He had been provided with the coronial file in this matter including statements and it appears, the Brighton Nursing Home file. Professor Byard provided a brief written report to the Coroner's Office on 29 August 2007 a copy of which was admitted as Exhibit C3. In it he stated as follows:

'On 29/8/07 I reviewed the coronial file on this 71-year-old woman who died at Brighton Aged Care facility on 18/7/07. Her past medical history included dementia, hypertension, asthma, a foot ulcer, depression and hypercholesterolaemia. There was no mention of any history of ischaemic heart disease.

She was found dead in her bed, lying on her left side with "the left side of her jaw near her chin resting against the help bar". There is inconsistency in the description of possible injuries to her neck with i) no bruises seen, ii) a scratch and a small bruise on the left side of her neck, and iii) three bruises the size of 20c pieces down the right jaw line.

Given the absence of a definitive clinical history preceding Mrs Wells death I would not be able to ascribe her death to any particular medical condition and so would have recommended that an autopsy be performed. In addition, the description of Mrs Wells being found with her head resting against the railing of the "help bar" with bruises under her jaw raises the possibility of an asphyxial episode, however in the absence of scene photographs and an autopsy report it is not possible to confirm or refute this possibility. In addition, confirmation of the nature of her neck injuries at autopsy would have been desirable.

¹⁹ Coroners Act, section 25(3)

I would, therefore, classify the death as “undetermined”.’

6.2. In evidence Professor Byard confirmed that he could not find a medical cause of death on the material he had reviewed. He acknowledged that statistically it was most likely that Mrs Wells probably died of ischaemic heart disease²⁰. Professor Byard said that the description “cardiac arrest” as given by Dr Saraf is not a cause of death but a description of a mechanism of death. Professor Byard was asked about a report prepared by Dr Bronte Ayres which was received as Exhibit C5²¹. Dr Ayres is a cardiologist and he expressed the opinion that with a background of hypertension, hyperlipidaemia and depression the deceased was predisposed to ischaemic heart disease which could lead to cardiac arrest. Professor Byard responded to this by stating “I think the important thing is that risk factors are not causes of death”²². Professor Byard summarised his position by saying that he did not think there was enough clinical information to determine a cause of death²³. Professor Byard was asked whether he could exclude other causes of death as possibilities. He said that there were other possible causes of death and these included:

1. Mrs Wells had been lying in bed for some time and may have had clots in the leg which formed an embolus²⁴
2. Mrs Wells may have had a stroke although this was less likely than ischaemic heart disease²⁵.
3. Mrs Wells may have asphyxiated²⁶.
4. Mrs Wells may possibly have died from a subdural haemorrhage²⁷.

²⁰ Transcript, page 13

²¹ Dr Ayres also gave evidence at the Inquest.

²² Transcript, page 24

²³ Transcript, page 29

²⁴ Transcript, page 14

²⁵ Transcript, page 15

²⁶ This can occur from blocking of the airways, it can occur if people get into a difficult position and their neck is resting on an object – see transcript, page 16. When asked whether there are necessarily outward signs of positional asphyxia Professor Byard said “Not necessarily. If somebody's pressing up against an object and it is against their neck they can get a reflex nervous response but that is not really asphyxia but it stops their heart but it is part of the process. Other times they could just get compression of the vessels and this can be sufficient to cause death. If they don't move they may not get haemorrhages of the eyes, they may not get a congestion of the face so, sometimes you see little haemorrhages and a congested face, sometimes you don't.”

²⁷ Professor Byard elaborated that it is possible that Mrs Wells may have hit her head on something firm and soft such as the end of a bed thus sustaining a subdural haemorrhage the manifestations of which would be confusion and sleepiness. However confusion and sleepiness may not be unusual symptoms for a person

7. **Dr Bronte Ayres**

- 7.1. Dr Bronte Ayres gave evidence at the Inquest. He is a cardiologist. He made a statement which was admitted as Exhibit C5. In his statement Dr Ayres said that the cause of death was likely to be “a ventricular fibrillation cardiac arrest (minutes) related to coronary artery disease (years) secondary to hypertension and hyperlipidaemia (years) with coexisting depression and Alzheimer’s disease.” He speculated that the presumed pain which might have accompanied an acute cardiac event may have been a factor in Mrs Wells struggling to the side of her bed before dying thus explaining the unusual position in which she was found. He expressed the opinion that it was much less likely that a primary cerebral event (stroke) had happened with such a relatively sudden death in bed and similarly considered that a closed head injury or asphyxiation would have been likely to create more obvious clues.
- 7.2. In evidence Dr Ayres stated that Mrs Wells had high blood pressure and high cholesterol, was of increasing age, was inactive and overweight and had depression. He described these as “a list of risk factors” and said that those are factors which predispose her to a sudden cardiac event. He said “she had a handful of them”.
- 7.3. Dr Ayres is an eminent cardiologist and I have the greatest respect for his opinion. However, he did not at any time examine Mrs Wells and never treated her. He made reference to her conditions which he described as risk factors. He also said that a person may die of a sudden cardiac event without having previously displayed any symptoms of ischaemic heart disease. However, with great respect, all of that is beside the point. The point is that once a death is reportable, it is no longer the task of a medical practitioner to give an opinion as to cause of death. The finding as to cause of death is for the State Coroner to make. Of course, the State Coroner may choose to accept a medical practitioner’s opinion as to cause of death, but nevertheless, the matter must be reported and the finding must be made by the State Coroner.
- 7.4. Furthermore, as Professor Byard noted, the conditions listed by Dr Ayres are risk factors, not causes of death. In my opinion it is impossible to separate the unusual

with dementia in a nursing home and there may be no outward signs of bruising or other damage and thus an autopsy would be the only way to determine whether this has happened or not – see transcript, page 32.

nature of the position in which Mrs Wells was found and the bruises which were observed by some witnesses from the list of symptoms enumerated by Dr Ayres as risk factors for cardiac disease, and reach a conclusion that Mrs Wells suffered an acute cardiac event as a result of which she moved into the position in which she was found.

8. Dr Peter Joyner

Dr Peter Joyner gave evidence. He is an experienced general practitioner who practises in Mannum. His evidence was to similar effect as Dr Ayres. However, for the reasons I have already expressed, it is my view that the proper finding to make in this matter is that Mrs Wells' cause of death is undetermined and I so find.

9. The ownership of Brighton Nursing Home

- 9.1. Counsel for Brighton Nursing Home advised that Brighton Nursing Home is owned and operated by Bresant Pty Ltd which trades as the Brighton Aged Care facility²⁸. Counsel for Brighton Nursing Home informed me that Dr Jagdish Saraf is the sole director of Bresant Pty Ltd and that Dr Jagdish Saraf and Dr Madhu Saraf are the only shareholders of Bresant Pty Ltd. Subsequently, Counsel for Brighton Nursing Home tendered a company search²⁹ of Bresant Pty Ltd which shows that the shares are held as follows: there are three issued shares of which one is held by Jagdish Chandra Saraf, one is held by Madhu Bala Saraf and one is held by Saraf Nominees Pty Ltd. It can be seen that this information is slightly different from that provided to me by Counsel for Brighton Nursing Home. No explanation was given to me by Counsel for Brighton Nursing Home as to the differences between the shareholdings as described by him to me and the details shown by Exhibit C15. The difference is that Exhibit C15 reveals involvement of a third shareholder namely Saraf Nominees Pty Ltd. However, I note that that shareholder's address is the same as the address Dr Jagdish and Dr Madhu Saraf. The name Saraf Nominees Pty Ltd implies an involvement of the Doctors Saraf.
- 9.2. Counsel for Dr Saraf and Counsel for Brighton Nursing Home/Bresant Pty Ltd both presented their submissions on the footing that I should proceed as if the only

²⁸ Transcript, pages 2-3

²⁹ Exhibit C15

shareholders of Bresant Pty Ltd are Dr Saraf and his wife. Clearly that is not the case, but given the nature of the third shareholder and its name I am prepared to accept that full control of the company rests with Dr Jagdish Saraf and Dr Madhu Saraf³⁰.

10. Dr Jagdish Saraf and Dr Madhu Saraf

- 10.1. Dr Madhu Saraf gave evidence at the Inquest. She is the wife of Dr Jagdish Saraf and a half-owner of Bresant Pty Ltd, and therefore Brighton Nursing Home.
- 10.2. Dr Madhu Saraf gave evidence about the circumstances in which she signed the second medical certificate. She confirmed that this occurred at the Sarafs' residence. She said that she and Dr Jagdish Saraf had a discussion about the cause of the cardiac arrest and the factors which predisposed Mrs Wells to coronary artery disease including hypertension. She said that she looked at the second certificate, was satisfied with the answers and then signed it³¹. She acknowledged that she did not view Mrs Wells nor peruse her medical records and never treated Mrs Wells³². Dr Madhu Saraf did not inquire as to the medications Mrs Wells was taking³³.
- 10.3. Dr Madhu Saraf was asked whether the fact that she had a financial interest through a shareholding in Bresant Pty Ltd in the Brighton Nursing Home caused her any misgiving in signing the second medical certificate. She responded that did not even consider that³⁴. She was told by Dr Jagdish Saraf that he was Mrs Wells' general practitioner³⁵. Dr Madhu Saraf said that in future she is not going to sign any second medical certificates³⁶. It was not clear to me whether by this she meant that she would not sign any second medical certificates where her husband was the signatory of the first medical certificate or at all.
- 10.4. Dr Jagdish Saraf gave evidence at the Inquest. He stated that he will never do any certifications of death regarding deaths in any nursing home in which he has a

³⁰ After these reasons were prepared Counsel Assisting me received a letter from the solicitors for Bresant Pty Ltd. They acknowledged the correct shareholding of Bresant Pty Ltd. They advised that the shareholders of Saraf Nominees are the Doctors Saraf (each of whom holds 100 shares and their two children, Manish Saraf and Payal Saraf each of whom holds one share.) This information does not cause me to alter my opinion in any way.

³¹ Transcript, page 134

³² Transcript, page 135

³³ Transcript, page 137

³⁴ Transcript, page 142

³⁵ Transcript, page 144

³⁶ Transcript, page 148

financial interest in future³⁷. He said that he has no hands-on administration at the Brighton Nursing Home³⁸. He described the circumstances in which he came to treat patients in the Brighton Nursing Home. He said he did not see any conflict of interest in so acting³⁹ but that it had not generally been his practice to act as a general practitioner to patients in his nursing home until a shortage of general practitioners willing to undertake that task necessitated his involvement in the couple of years preceding Mrs Wells' death.

- 10.5. It was faintly suggested on behalf of Dr Jagdish Saraf that he was approached by the Director of Nursing to assist the nursing home in providing general practitioner services to its residents. To the extent that it may have been suggested that Dr Jagdish Saraf was in some way assisting the nursing home by offering his services, I reject that. Dr Jagdish Saraf had a financial interest in the successful operation of the nursing home and by making himself available to act as a general practitioner in the absence of any other general practitioner being willing to do so was in his own interests as much as in the interests of the body corporate Bresant Pty Ltd in which he and his wife held, directly or indirectly, all or most of the issued share capital.
- 10.6. Dr Jagdish Saraf stated that he was never told about the position in which Mrs Wells was found at the time of her death and only became aware of that some eight days after her death⁴⁰.
- 10.7. Dr Jagdish Saraf described the circumstances in which he attended to certify Mrs Wells' death. He said that he met Ms Cockerell the registered nurse at the nursing home and that she took him to Mrs Wells' room. He went in and certified the death. He said that during the walk to the room and right after, Ms Cockerell never at any stage said that there was anything unusual about the way in which Mrs Wells was found⁴¹. Dr Jagdish Saraf said that when he saw Mrs Wells she was lying supine on her bed. He was asked if he understood that to be the position that she was in at the time of her death and responded:

³⁷ Transcript, page 150

³⁸ Transcript, page 153

³⁹ Transcript, page 155

⁴⁰ Transcript, page 165

⁴¹ Transcript, page 167

‘I presumed that she was in a comfortable position, she was not sort of - nobody told me that there was anything unusual.’⁴²

10.8. Dr Jagdish Saraf was asked by his own Counsel whether, had he been told that there was “anything associated with the position she was in at the time that respiration had ceased” he would have done anything about that, and he responded:

‘Well I would have asked them to inform the Coroners ...’⁴³

10.9. Dr Jagdish Saraf said that he examined Mrs Wells for the purposes of the certification. He pulled the sheet which was covering her down to the middle of her waist and examined her heart to see if there was any heart sound. He felt for the carotid arteries and looked at her eyes noting that both pupils were dilated and not reacting to light. He said of the portion of her body he could see there were no obvious injuries. He did not notice any bruising on the right side of her jaw⁴⁴.

10.10. Dr Jagdish Saraf accepted that “cardiac arrest” was an insufficient description of cause of death and that he ought to have provided more detail in that respect by adding a reference to coronary heart disease⁴⁵. He gave evidence that was consistent with that of his wife in relation to the circumstances in which his wife signed the second medical certificate⁴⁶.

10.11. Dr Jagdish Saraf said that in signing the first certificate and certifying the death of Mrs Wells he was informed by a professional person and relied on the judgement of a professional person – in this he was referring to Ms Cockerell⁴⁷. Dr Jagdish Saraf was shown the photographs that were produced by Counsel for Bresant Pty Ltd depicting Ms Cockerell in a position which was said by her to be the position in which Mrs Wells was found. Dr Jagdish Saraf was asked whether had he seen her in that position he would have had reservations and he responded as follows:

⁴² Transcript, page 167

⁴³ Transcript, page 168

⁴⁴ Transcript, page 168

⁴⁵ Transcript, page 172

⁴⁶ Transcript, page 173

⁴⁷ Transcript, page 205

‘It's very difficult now to look at the photographs in hindsight and make a judgment. If I'd seen and decided then I would have made a decision according to when I saw on site and I can't make a judgment on looking at those photographs and the actual situation.’⁴⁸

Dr Jagdish Saraf was asked whether he would be concerned to find a deceased person in his nursing home in that sort of position and responded:

‘It may concern but, look, as I said, these are created photographs that are sort of a dummy situation. Unless you see the actual situation sometimes you can't sort of comment on that.’⁴⁹

Dr Jagdish Saraf acknowledged that he would have liked to have seen Mrs Wells in the position in which she was found had he been told of that position⁵⁰.

10.12. It is interesting that Dr Jagdish Saraf was reluctant to comment on his hypothetical reaction based upon the position of Ms Cockerell in the photographs⁵¹. I take his evidence to be a reluctant acceptance that he did regard the photographs as indicative of an unusual position at death, bearing in mind his concession that if he had been told about the position in which she was found he would have liked to have seen her in that position⁵². Dr Jagdish Saraf's reluctance to comment upon the photographs is telling bearing in mind that they were created by or on behalf of the company of which he and his wife have near total control and that the photographs were generated on behalf of that entity for the purposes of the Inquest. Dr Jagdish Saraf certainly was not prepared, in the face of the photographs, to assert that had he found a person in the position depicted by Ms Cockerell in those photographs he would have had no reservations about certifying death. Instead, he acknowledged that “it may concern”⁵³ but dismissed the photographs as inadequate saying that he would have to make a judgement on the “actual situation”⁵⁴.

10.13. Dr Jagdish Saraf was asked whether he acknowledged that positional asphyxia was a possible cause of death that presented itself having regard to the position depicted in the photographs and responded:

⁴⁸ Transcript, pages 208-209

⁴⁹ Transcript, page 209

⁵⁰ Transcript, page 209

⁵¹ Exhibit C4

⁵² Transcript, page 209

⁵³ Transcript, page 209

⁵⁴ Transcript, page 209

‘I still think that asphyxia - I think still in that position, asphyxia is not possible.’⁵⁵

10.14. In my opinion, Dr Jagdish Saraf was stubbornly adhering to a position that would justify his decision to give “cardiac arrest” as a cause of death in this answer. In my view, no competent doctor could assert that asphyxia is not possible having regard to the position depicted by Ms Cockerell in Exhibit C4. I think it unlikely that Dr Jagdish Saraf would be so incompetent. As I said, I consider that his insistence that asphyxia was not a possibility in those circumstances is attributable to his wish to justify his certification of cardiac arrest.

10.15. Dr Jagdish Saraf was asked what he meant by his note in the first medical certificate that Mrs Wells was “chair – fast”. He explained that:

‘Chair-fast can sometimes cause problem too but I’m not saying that there was any evidence of DVT, deep vein thrombosis, I’m not saying that there was but there are lots of things that can happen to chair-fast people.’⁵⁶

In this passage of evidence Dr Jagdish Saraf is implicitly acknowledging the force of the observation made by Professor Byard that, because she was bed-bound, Mrs Wells may have suffered a clot in her leg which may have caused an embolus.

10.16. Finally, Dr Jagdish Saraf said that he did not think that there was anything inappropriate in having his wife and fellow shareholder in Bresant Pty Ltd sign the second medical certificate for Mrs Wells notwithstanding that she had died in Brighton Nursing Home⁵⁷.

11. Conclusion and recommendations

11.1. In my opinion the circumstances surrounding the discovery of Mrs Wells’ body were such that her death could be described as “unusual” because of the position in which she was found. Therefore I find on the balance of the evidence that hers was a reportable death. At the very least it was most certainly such as may have been a reportable death and was therefore required to be reported pursuant to section 28 of the Coroners Act 2003 so that a proper assessment could be made.

⁵⁵ Transcript, page

⁵⁶ Transcript, page 212

⁵⁷ Transcript, page 216

11.2. In my opinion, although it was not unlawful for Dr Jagdish Saraf and Dr Madhu Saraf to sign cremation certificates for a patient/resident of a nursing home that was indirectly jointly owned by them, it was quite inappropriate for them to do so⁵⁸. They had a financial interest in the successful operation of the nursing home on the one hand, and on the other hand they owed a duty to answer truthfully the questions contained on the first and second medical certificates as to Mrs Wells' circumstances of death. By way of example, one such question was "Have you any reason to believe that the death of the deceased was due, directly or indirectly to privation or neglect?" This question was answered in the negative by Dr Jagdish Saraf. It is hardly surprising that he would answer this question in the negative, because Mrs Wells had been living for the previous four months in a nursing home in which he had a financial and proprietorial interest. To offer any other answer would have been to concede that Dr Jagdish Saraf himself was indirectly responsible for any privation or neglect that Mrs Wells might have suffered. The briefest of consideration would lead a reasonable person to conclude that it would be inappropriate to place himself or herself in the position of signing a certificate in these circumstances where the duty to accurately certify conflicts so clearly with the proprietary and pecuniary interests of the signatory. In addition to that conflict, there is the further conflict that arises out of the relationship between Dr Jagdish Saraf and Dr Madhu Saraf. The decision of Dr Madhu Saraf to sign the second medical certificate in the circumstance where her husband had signed the first was in my view at least undesirable if not professionally inappropriate. For the sake of completeness I acknowledge that, by section 6(5) of the Cremation Act 2000, a doctor must not give a certificate under that section knowing either 1) that he or she has a pecuniary interest in the death of another person under a policy of life insurance; or 2) that he or she is entitled in expectancy of the death of another person to any real or personal property. I suppose it could be suggested that the specific prohibition of those two obvious forms of conflict implies that no other conflict should give rise to reluctance on the part of a medical practitioner to sign a cremation certificate. Section 6(5) of the Cremation Act 2000 creates a criminal offence the maximum penalty for which is imprisonment for four years. In my view, the fact that the legislature has imposed a criminal offence for a person who places himself or herself in a particular conflict of interest does not mean that the legislature

⁵⁸ I say nothing of the lawfulness of signing the certificates having regard section 6(4) of the Cremation Act 2000. That is another matter entirely, which I intend to recommend be considered by the Attorney General.

has implicitly authorized all conflicts of interest short of those prescribed in section 6(5).

- 11.3. I recommend that the Attorney-General consider the introduction of a Bill to amend the Cremation Act 2000 by extending the prohibition in section 6(5) to cover the certification of deaths in a nursing home in which a medical practitioner has a financial or proprietary interest. In considering this measure, the Attorney-General may wish to consider other interests which might disqualify a doctor from certifying a person for cremation in particular cases.
- 11.4. I recommend that the Medical Board of South Australia give consideration to whether the conduct of either of the Doctors Saraf was in breach of the Medical Practitioners Act. I have found their conduct to be inappropriate in the sense described in these findings. I make it clear that I do not in any way intend to pre-empt any finding of the Medical Board.
- 11.5. I recommend that the Attorney General consider these findings with a view to determining what action, if any, should be taken against any person pursuant to section 28 of the Coroners Act 2003 and section 6(4) of the Cremation Act 2000.

Key Words: Aged Care; Nursing home; Reportable death.

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 7th day of February, 2008.

State Coroner