

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-2015-485-235

UNDER The Declaratory Judgments Act 1908 and the
New Zealand Bill of Rights Act 1990

BETWEEN **LECRETIA SEALES**

Plaintiff

AND **ATTORNEY-GENERAL**

Defendant

**REPLY AFFIDAVIT OF ELIZABETH ANN SMALES
AFFIRMED MAY 2015**

RUSSELL McVEAGH

A S Butler | C J Curran | C M Marks
Phone +64 4 499 9555
Fax +64 4 499 9556
PO Box 10-214
DX SX11189
Wellington

I, **ELIZABETH ANN SMALES**, doctor, of Hawke's Bay, sincerely and solemnly affirm:

Introduction

1. I am a Palliative Care Physician, who practiced primarily at Cranford Hospice in Hawke's Bay.
2. I have previously affirmed an affidavit in this proceeding, dated 23 April 2015. In my first affidavit, I set out my personal profile. I confirm that I have read the High Court Code of Conduct for Expert Witnesses as set out in schedule 4 of the High Court Rules. I agree to comply with the provisions of the Code.
3. The purpose of this short affidavit is to reply to some of the points made in the affidavit of Baroness Ilora Finlay dated 6 May 2015:
 - (a) Paragraph 43: Baroness Finlay is correct that I do not cite evidence from discussions with the individuals that committed suicide, neither of whom were under my care (at paragraphs 33 to 40). However, my evidence is based on my knowledge of the individuals concerned and discussions with family and friends.
 - (b) Paragraphs 104 and 105: I agree, the meetings are a demonstration of clinicians striving to find ways to improve practice and learn. Many of the attendees at such meetings take the opportunity to discuss the most challenging patients in-depth. The challenge may have been symptom control, family dynamics, any other suffering that arose, or any combination of the above. We discuss the interventions we made and consider the other possibilities that could be used if the situation arises again. It can be a really useful learning experience. In my opinion, it is important to recognise that there are limitations on what even excellent palliative care is able to achieve (and not everyone has access to excellent palliative care). There is a small percentage of people who face suffering (including pain) that such palliative care is unable to control while keeping the patient conscious.
 - (c) Paragraph 106: I discuss the importance of careful and accurate diagnoses at paragraph 13 of my first affidavit.
 - (d) Paragraphs 107 - 111: I see no need to respond to the unfounded professional criticisms, but note that palliative sedation is part of palliative practice in New Zealand. Of course the dosage for each individual is titrated until suffering is relieved. For a small group of patients, this process leads to the patient being unconscious until death. The goal is always to achieve the desired result with the minimum dose of medication. I note that Dr Simon Allan in his affidavit dated 27 April 2015 expresses his view in similar language (at paragraphs 17 - 23).
 - (e) Paragraph 115: No basis is provided for her refutation. In my experience, the suffering is distressing and difficult to imagine.

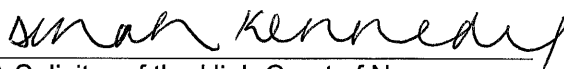


- (f) Paragraph 116: I agree that no PEG should have been inserted. To avoid any doubt, this man was not my patient. I was working with his wife, who was struggling to come to terms with what had happened.
- (g) Paragraph 117: I do not have enough experience with patients stopping eating and drinking to feel comfortable asserting whether it would be a better or worse death than one from aid in dying or palliative sedation. I do know that the 9 days it took my friend to die from dehydration were very challenging for her and everyone involved in her care.
- (h) Paragraph 118: It is my understanding, as a friend and not as her treating physician, that my friend was competently and sensitively managed. Her main issue was the imminence of a non-viable leg, not just pain and limitation of movement, hence the discussion in my first affidavit about amputation and possible gangrene (at paragraph 38).

AFFIRMED at Hawke's Bay this 19th day of
May 2015 before me:



Elizabeth Ann Smales



A Solicitor of the High Court of New
Zealand

DINAH MARY KENNEDY
Solicitor
HASTINGS