June 12, 1998

To: Mary Jane Duchene

From: John S. Burns M.D.

Re: review of the case records for Jane Duchene

Please find enclosed the review of the pertinent records in reguards to your mother's case. I also have included a disk as per your request. If you should have any questions please feel free to contact me at any time. I am looking foward to working with you in the future.

Sincerely,

John S. Burns M.D.

June 1, 1998

In this review I would like to touch on three major points: the first of which has to do with the area of medical ethics and involves the first rule of medicine and certain aspects of the Hippocratic Oath, secondly the standard of care concept in the present medical practice today, and lastly that a "Do Not Resuscitate" order on a patient, either in a hospital or nursing home, does not mean "do not treat". Lastly, based on these three points I would like to state that although I am not a forensic pathologist nor am I a prosecutor, it is my considered opinion that Mary Jane Duchene, the daughter of the deceased, certainly does have grounds for asking that a grand jury be convened in the appropriate jurisdiction to consider charging the attending physician, Victor Corbett, M.D., with 1st degree murder.

I should also at this point give some information on my own background. I am a board certified residency trained family physician and I have been practicing medicine for approximately 13 years. I have considerable medical and clinical experience with both the civilian and military aspects of medical practice, and I have a fair degree of familiarity with forensic medicine.

The following chronology of events should help in order to put everything into perspective. Mrs. Jane Duchene was a 68 year old white female who on or about the 23rd of April 1986 was placed in Wedgewood Nursing Home, which is on the outskirts of St. Paul, Minnesota, because of medical complications regarding her insulin dependent diabetes and apparently terminal lung disease which supposedly prevented her from living outside of the nursing home without specialized care. Apparently the decease's brother, whose name was Roger Krause, had legal jurisdiction and custody over Mrs. Duchene and was able to

place her in the nursing home. The manner in which this placement was carried out is highly questionable and there are definite legal ramifications concerning this which still have not been fully resolved. Also, it is not clear that Mrs. Duchene's mental state at that time clearly warranted placing her in a nursing home facility. It should be noted even if we assumed that the patient was not fully mentally competent as far as knowing or understanding legal documents that does not mean that she could not have been cared for at home by a close relative. At the time of her entry into Wedgewood Nursing Home, the patient had the following diagnosis:

(1) Adenocarcinoma consistent with right lung peripheral primary and apparently based on her neurological examination she had metastasis from the right pleural area to the brain and this had affected her ability to care for herself to some degree and her ability to concentrate although it appears that she was well oriented on the day that she was admitted to the nursing home. The diagnosis of adenocarcinoma involving the pleural lining of the right lung was made in January 1986 at Mercy Hospital. Mrs. Duchene underwent a series of radiation treatments between July 14, 1986 through July 31, 1986. It was reported that she tolerated the treatments well and had considerable pain palliation and regression of the tumor mass in the right lung. This radiation therapy was done through St. Joseph's Hospital by Dr. Yashoda Rao, M.D., from the radiation therapy department.

(2) The other diagnosis that Mrs. Duchene had was insulin dependent diabetes millitus. The diagnosis of insulin dependent diabetes was made in November 1975 and basically Mrs. Duchene had been on insulin ever since that time.

The insulin coverage for Mrs. Duchene was managed by Dr. Corbett during her stay at Wedgewood Nursing Home. There were some problems with

regulating the patient's blood sugar after her admission to Wedgewood Nursing Home in April 1986. The orders were initially from Dr. Corbett for 15 units of Lente in the AM and 10 units of Lente in the PM. Also a sliding scale of her regular insulin was instituted for the PM. It was in June 1986 that the patient began having falling down episodes and glucometers readings in the 40's. Adjustments were made to the insulin orders and glucometer readings were needed less frequently by July 1986 as the patient's blood sugar stabilized. She seemed to be tolerating the new insulin regime. The new insulin orders were to reduce the daily dosage to below 20 units of Lente a day, for a total of 15 units of Lente daily with 12 units of the Lente to be given in the AM, and 3 units of Lente to be given in the PM along with 4 units of regular insulin. The sliding scale was also changed from 4, 6, 8 and 10 units of regular insulin to 4, 5, 6 and 8 units of regular. This was done on July 2, 1986. After insulin was restored to a dosage similar to that which the patient was previously taking when she was discharged from United Hospital on February 11, 1986, the patient had no major episodes of insulin shock from hypoglycemia. From July on the patient's caloric intake and weight seemed to be fairly good. As of the 23rd of July she weighed 80 pounds and seemed to eating well. Again in August of 86 it is noted that she is eating quite well after her radiation treatments. It should also be noted that on October the 7th her weight was up to 83 pounds and again she seemed to be eating quite well based on her baseline standards and she was taking in an appropriate amount of fluids. It is important to note that before Mrs. Duchene's placement in Wedgewood Nursing Home and after her placement in Wedgewood Nursing Home there were certain questionable legal manueverings that took place on the part of her brother Roger Krause and his wife. These questionable activities by the Krause's amounted to an attempt to gain control over Mrs. Duchene's estate. Furthermore in September of 1986 Mr. Krause was diagnosed with pancreatic

cancer. Because of this extremely grave diagnosis it became obvious to the Krauses that it would be highly advantageous if Mrs. Duchene were to die before her brother Roger. With Mrs. Duchene's death coming first the estate would ultimately pass on to Mr. Krause's wife. It should also be noted that the Krauses were very good friends with Dr. Corbett. The advantages for the Krauses as a result of the demise of Mrs. Duchene before Mr. Krause has a bearing in this , and should be seen in the proper context in order to review the actions taken by Dr. Corbett in late October of 1986. There was obviously an implied financial benefit for Dr. Corbett as well.

On October 23, 1986 at 5:45 AM the glucometer reading for Mrs. Duchene's blood sugar was 67 and as usual she was given orange juice. Dr. Corbett was called by Jane Costa the nurse on duty at 9:00 AM and received orders for a reduction of 66% of Mrs. Duchene's daily Lente insulin. Jane Costa initially believed that this was a mistake and she wrote down a discontinuation of only 4 units of regular insulin in the AM and she wrote this at around 11:45 AM. It appears that Dr. Corbett called back and ordered discontinuation of 9 of the 15 total units of Lente insulin which were to be given daily and this repeat order was given at 12:15 PM. Mrs. Duchene's blood sugar readings was 229 at 12:15 PM, the documents in the original legal briefings labeled exhibit D30 and D31 showed the glucometer readings of "HHH" or "high high high" in October occurred after these orders were implemented. It should be noted that on the October 27th Mrs. Duchene was taken to Dr. Corbett's office, see exhibit B50. The purpose of this appointment was to enable the attending physician to examine the patient to clear her as competent in order to give a DNR order. Dr Corbett concluded that Mrs. Duchene was competent, that she desired a DNR order, and so stated in his notes for that day's visit. However, it should be noted

that the nursing notes from Wedgewood Nursing Home at this time show clear evidence of ketoacidosis; including acetone breath, weakness, and confusion. All of this following Dr. Corbett's reduction of Mrs. Duchene's Lente insulin by approximately 66% on October 23. Furthermore it should be noted that the Minnesota court of appeals found Mrs. Duchene to be incompetent for approximately one month prior to her death. Minimally, I would say that the obvious ketoacidosis accenuated and exacerbated her underlying confusion. Nevertheless even in the context of his patient's obvious increased confusion Dr. Corbett issued a highly dubious DNR order. Mrs. Duchene continued to deteriorate. Her weight on November 14th is reported at 68 pounds and she became more dehydrated, her blood sugars remained very high, she became more confused. She entered a coma and evidentually died on November 19, 1986.

From the time the insulin orders were changed on October 23, 1986 and until the patient died on November 19, 1986 as far as I can ascertain, there were no adequate blood sugar levels obtained, aside from approximations may by glucometer, electrolytes obtained or any attempt to correct the obvious impending diabetic ketoacidosis and coma. Based on the nursing notes and the clinical deterioration of the patient, it is my conclusion that she indeed did die primarily of diabetic ketoacidosis. There is no indication that her underlying adenocarcinoma from the right lung or apparent central nervous system involvement was the direct cause of her death. If anything, she seemed to be stable and actually improved as far as that condition was concerned after her radiation treatments in July of 1986. It is clear to me that she was receiving treatment for her insulin dependent diabetes which was controlling this condition, when this treatment was abruptly changed the results were disastrous.

An "autopsy" was performed on November 22, 1986 and this was performed by Dr. Plunkett and a pathology report is what was submitted with the

diagnoses that follow. It should be noted that Dr. Plunkett was a long term acquaintance of Dr. Corbett's and also knew the Krause's personally. Therefore, minimally, it would seem to me that there may have been a conflict of interest in regards to Dr. Plunkett performing this "autopsy". The diagnosis were as follows:
(1) Well differentiated adenocarcinoma, consistent with a right lung peripheral primary, with extensive involvement of the right pleural space, metastasis to the right cerebellar hemisphere, leptomeninges, substantianigra, liver, and left adrenal gland.
(2) Diabetes millitus/clinical.
(3) Focal broncho pneumonia.
(4) Severe emaciation.

The body, it should be noted, was embalmed before the autopsy was performed. The reasons for this I'm not clear on. I understand supposedly there was some problem with the refrigeration unit, but after all this was in late November in Minnesota when adequate building heating would be more of a problem than air conditioning or keeping the building cool. Furthermore, I am not aware of any severe problems at that point with other deceased individuals for whom an embalming procedure was necessary because of problems with refrigeration units. At any rate even if embalming was necessary before the autopsy, which is not the normal protocol, I am questioning why all bodily fluids were not at least sampled before the embalming including blood for blood chemistries, obviously blood sugar levels, urine catheterized from the bladder, and possibly cerebral spinal fluid. Such samples surely could have been preserved and refrigerated. Also, since this was obviously a diabetic patient with apparent emaciation and dehydration why were not cultures taken from blood, sputum, and urine to help rule out death from infection and sepsis. Again body fluid samples could easily have been refrigerated. Lastly the document submitted

by Dr. Plunkett is a pathology report. It consists of four diagnosis. This document is not truly an official autopsy report with a final determination of the cause of death. There is no determination or demonstration that the metastasis caused death through compression of the brain stem or other vital centers controlling respiration and cardiac function. Nor would focal broncho pneumonia cause death without evidence of blood borne infection or sepsis. Again we have no cultures to go by. Dr. Plunkett's "report" is highly unusual and basically inadequate. It really say nothing of importance or relevance in this case.

In conclusion, let me return to the three points that I mentioned in the beginning as they are applied in this very unfortunate case. From a philosophical point of view we as physicians are all aware of the first rule of medicine which in Latin is stated "primum non nocere". This means simply "first, do no harm". Its meaning is obvious in that we have an ethical and moral consideration to do nothing which would either by commission or omission harm or injure our patients. We are also aware of the tradition of the Hippocratic Oath by which we are sworn not to give any harmful substances to our patients, not to help them commit suicide, not to participate in abortions, and to hold the health and well being of our patients above all.

The first rule of medicine and the Hippocratic Oath go quite well together. From a moral point of view, it would appear to me that Dr. Corbett did not act in the best interest of his patient Mrs. Duchene. It is impossible for me to avoid the conclusion that in all probability he acted in a premeditated way to withhold from her essential medical services that would have been necessary for maintaining her life. It is unfathomable to me that a supposedly competent internist and endocrinologist such as Dr. Corbett would have withheld this lady's insulin as he did, especially since she was clinically stable at the time with a good

appetite and an actual weight gain. A drastic reduction of 66% of her total Lente insulin would have had obvious consequences leading to diabetic ketoacidosis and dehydration and finally death. I do not understand why he did not monitor such a plan with appropriate blood sugars, not just glucometer readings, but blood sugars and electrolytes and why he did not take immediate measures to reverse his orders when he saw her condition clinically deteriorating and also that she was in a pitiful state with dehydration and emaciation. This gets into the second point regarding the standard of care. Obviously this is a violation and departure of the standard of care. There are very clear cut and sensible management rules for diabetic patients in nursing homes, hospitals, and ambulatory at home, while monitoring their diet, exercise, weight and fluid intake. Dr. Corbett's actions were a clear and dramatic departure from this standard of care. This issue overlaps with the first issue of medical ethics and the good of the patient. The last point concerns Dr. Corbett's DNR order and relates to the first two issues concerning the patient's best interest and the standard of care. As I stated the DNR order was highly questionable because of Mrs. Duchene's compromised mental ability. However, let us assume the DNR order was valid. Let us disregard the fact that Dr. Corbett's change of insulin orders exasperated the patient's confusion making the DNR order even more questionable. A "do not resuscitate" order whether at home, nursing home, or in a hospital does not mean "do not treat". It does not mean to withhold ordinary treatment which is necessary to sustain the patient's life and give them comfort and help them to live out the last months of their lives in comfort and in dignity without suffering. Once the DNR order was given nobody was expecting or asking Dr. Corbett to use extraordinary measures or cardiopulmonary resuscitation on this woman who was a cancer patient and who was apparently terminal. But that does not mean that he should not have observed the ordinary standard of care.

Taking all of the above mentioned points into consideration, including Dr. Corbett's very possible financial involvement with the Krause's and his involvement with their questionable legal activities in regard to placing Mrs. Duchene in Wedgewood Nursing Home in the first place, I restate my original contention in the beginning of this review. I most certainly do think that it is appropriate that a grand jury be convened to consider charges of first degree murder against Dr. Victor Corbett.