

Be careful what you write in emails and post on social media

It's a fairly common thing. People write things they don't really mean for effect or just to be funny. Things like, "if [such-and-such] happens, just shoot me and put me out of my misery!"

But, today, if such comments are posted online or in emails, they may prove fatal—especially if the writer lives in England or Wales.

Last December, the British Medical Association (BMA) issued a 93-page guidance for doctors to follow when they are assessing whether to start or continue the provision of nutrition and hydration for patients who lack the capacity to make their own medical decisions. According to the guidance, "anything relevant the patient wrote down—in a diary, letters, on social media, or in e-mails" can be used by doctors to determine whether life-sustaining treatment, including nutrition and hydration, should be withdrawn, resulting in the patient's death. [BMA, "Clinically-assisted nutrition and hydration (CANH) and adults who lack the capacity to consent," p. 62]

The guidance is the result of an October 2017 court case in which a Court of Protection judge ruled that a comatose 74-year-old woman, referred to as Mrs. P, could be denied all food and fluids.

The judge based his ruling in large part on an email message Mrs. P sent to her daughter *four years earlier* in 2013. Mrs. P, who was known to be a heavy drinker, had just seen a TV documentary on dementia that troubled her and reminded her of the deaths of two family members. She emailed her daughter this message:

"Did you see that thing on dementia? Made me think of Dad and what a travesty of life his last years were and all the sadder as he had such incredible talent. You know I miss Mum everyday and still talk to her but it is a comfort that she went quickly and I am still haunted by how he ended up... Get the pillow ready if I get that way!... Love Mum" [Salford Royal NHS Foundation Trust v. Mrs. P, Approved Judgment, 10/30/17, at 35]

The judge wrote in his ruling that, while some consider the email to contain just "casual throw away remarks that we all make from time to time and are ultimately meaningless"—like "Take me out and shoot me"—he does not. "...I find the email to be reflective of her determination to preserve her independence, her privacy and her autonomy." [Salford v. Mrs. P, at 37]