



## CRIMINAL LAW: SPECIFIC OFFENCES

### – Intermediate Exercise SS 2021 –

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Francisco, the director of the cardiac surgery department at Santa Maria public hospital, is a well-known surgeon specialized in cardiac diseases. On 27 February 2020, on which he scheduled for himself an 'on-call' night shift, Maria, a young specialist in cardiac surgery takes on the presential night shift. As Maria completed her specialisation only six months ago and cardiac surgeries require the presence of minimum two specialists, Francisco, being the other specialist available at that time, is required to show up within thirty minutes (from the moment he will be notified) in case that a patient needs to be operated outside the daily agenda, i.e., because of emergency.

On the aforementioned day, Catarina arrives with her husband Pedro, who has been a patient of Francisco for many years now, at 11:30 pm at Santa Maria, and Pedro is already unconscious.

Pedro is a 60-year-old famous Portuguese painter, who presents various symptoms of the Alzheimer disease by experiencing greater memory loss and certain cognitive difficulties leading among other things to troubles related to money handling, disorientation and progressive inability to recognise persons that used to be close to him. Having identified those difficulties some time ago, he decides that Catarina, his wife, shall handle health care related decisions on his behalf in those cases, in which he will not be able to do so solely by himself. In that context, he explains to Catarina that he would like to live long enough to see his grandchildren getting older, even if he won't be able to recognise them, and that he would like to continue enjoying the Portuguese sun for the years to come. Catarina promises to respect his will. Besides this, Pedro, during the first months he was diagnosed with the Alzheimer disease, gave an interview in a Portuguese journal expressing his great love for life and stating he would like to enjoy the colours of the Portuguese countryside and the ocean until the day he will take his last breath. That interview did not entail any reference to his medical condition.

That night, Maria examines Pedro and diagnoses a severe heart episode. This is when she also realises that it is of literally life importance for Pedro to be operated immediately due to the suspicion of an

internal bleeding. She calls Francisco to inform him, but the latter believes that this is most likely a misjudgement and Pedro is not in danger, but he reassures her that he will show up in thirty minutes as agreed. In reality, Francisco, who knows both Pedro and Catarina for many years now, decides to stay at home and go to the hospital the day after, believing that it is simply Catarina who overreacts due to the special condition of Pedro and thinking that in any case Pedro would be fine until next morning.

Maria waits for Francisco for thirty minutes, as agreed, and, since he does not show up within that time window, she announces to Catarina that they will have to move on without Francisco. Catarina, who does not know Maria personally and she does not trust her as a doctor, reacts negatively saying that she denies her consent and they should definitely wait for Francisco to show up. While having that conversation, Catarina informs Maria that her husband is suffering from the Alzheimer disease. Maria, who happens to admire the artwork of Pedro and has read the aforementioned interview, ignores her and moves on with the surgery, during which it becomes apparent that there was indeed an internal bleeding that would have invariably led to Pedro's death within the next three hours, if he hadn't been operated.

The surgery goes particularly well, and Pedro recovers from the heart episode relatively quickly – fact that leads to the immediate promotion of Maria, while Francisco is forced to quit his job. Maria is gradually becoming a well-respected young surgeon specialised in dealing with internal bleedings. As such, she is called to a cardiac surgery conference on 10 January 2021, where she decides to open her presentation by touching upon her recent experience. In that context, she reveals that some really well-known Portuguese citizens belonging to the arts world have successfully been treated by her saying among other things: 'Despite the family drama, despite the insecurity feelings, despite the deep pain mental diseases are causing both to the patient and his family, I was strong enough to intervene and save a life, a life of a real artist of Portugal – even if I will never be remembered by the maybe greatest Portuguese painter of his generation.'

João, Pedro's son and student in the Lisbon Medical School, is one of the conference participants. During the break following Maria's speech, some colleagues approach him and ask him how is his father feeling after all these months, and express their sympathy as they did not that Pedro was among other things an Alzheimer patient.

**Evaluate the actions of Maria and Francisco in the light of the Portuguese Criminal Law.**

**Boa sorte!/Good luck!**