

Minter Ellison Health News

28 July 2010

Case law

NSW

HCCC v Mnyandu

A nurse's decision to accept gratuitous cheques for \$10,000 from a psychiatric inpatient was held to constitute both unsatisfactory professional conduct and professional misconduct. Two cheques for \$5,000 each were offered by the patient, who had bipolar disorder and was having an episode of hypomania at the time the cheques were made. The hypomania caused the patient to spend money recklessly, and this symptom was recorded in the clinical notes to which the nurse had access.

The offer of the cheques was provoked by the nurse deciding to tell the patient about her personal financial difficulties. After accepting the cheques, the nurse banked one before she had second thoughts. She destroyed the other cheque without banking it and visited the patient, who had been discharged, in his private home to return the money she had banked. To do this, she accessed the address in the patient records.

The NSW Nurses and Midwives Tribunal examined the evidence and found that the nurse's decision to return the money was more likely to have been motivated by a desire to avoid disciplinary proceedings than genuine remorse. Although the Tribunal was satisfied that the payments had not been actively solicited by the nurse, it considered her misconduct to have been too serious to warrant any lesser penalty than deregistration. The specific elements of the nurse's misconduct that were of greatest concern to the Tribunal were accessing medical records to obtain a home address for private use, and failing to report the clinically significant information that a patient with hypomania had a chequebook. In addition to deregistration, the nurse was ruled ineligible to apply for re-registration for a period of 18 months.

[Click here for decision](#)

New Zealand

Deputy Health and Disability Commissioner: Norfolk Court Rest Home Ltd, Registered Nurse Ms E and Rest Home Manager, Ms F

The Commissioner received a complaint about the services provided to Mrs A, a rest home resident, by Norfolk Court Rest Home Ltd (Norfolk Court). Mrs A suffered three falls in January and February 2009, after which she was examined by Norfolk Court's registered nurse, Ms E. No serious injuries were detected, and Mrs A was encouraged to walk. After the third fall, Mrs A was examined by Dr J at her family's insistence. Dr J also concluded that Mrs A had no serious injuries.

On 26 February, Mrs A was taken to the local medical centre for an X-ray, which revealed a fractured right ankle (approximately one week old) and a fractured right hip (several weeks old).

The Commissioner found that Ms E had breached Rights 4(1) and 4(2) of the Code of Health and Disability Consumers' Rights (the Code) in failing to provide Mrs A with services of an appropriate standard with reasonable care and skill. While acknowledging Ms E was working under difficult conditions involving a heavy workload and little clinical support, the Commissioner found that Ms E had failed adequately to attend to Mrs A and her ongoing pain and her documentation was well below the expected standard.

Ms F, who had the overall responsibility to ensure that services delivered to rest home residents complied with relevant standards, was found to have breached Rights 4(2) and 4(4) of the Code by failing to ensure the services provided minimised potential harm to Mrs A or optimised her quality of life.

The Commissioner took the view that the policies and procedures in place at Norfolk Court 'did not provide an adequate safety net for Mrs A'. The failures of staff to provide an appropriate standard of care were in part due to Norfolk Court's appointment of staff to positions beyond their level of experience and skill, and without adequate support to ensure safe practice. Accordingly, Norfolk Court was found to have breached Rights 4(1), 4(2), and 4(4) of the Code and was referred to the Director of Proceedings.

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Acting Health and Disability Commissioner: Norfolk Court Rest Home Ltd, Registered Nurse Ms E and Rest Home Manager, Ms F

The Commissioner received a complaint from Mr B about the services provided to his father, Mr A, by Norfolk Court. Mr A was a resident in Norfolk Court's secure dementia unit. In January 2009, Mr A's son visited Norfolk Court and found Mr A strapped into a chair, unconscious and incontinent. He had been informed by staff the previous day that Mr A had exhibited threatening behaviour towards staff and that they were exploring medication options. When

Mr A's son visited and found Mr A to be 'stupefied', he presumed this was due to medication. He was also advised that Mr A had suffered several falls the previous day.

Mr A's wife also visited Mr A in early January and insisted Mr A be seen by a doctor, believing his stupefaction was not due to a new drug regime. Mr A was admitted to hospital following review by a doctor, where a CT scan confirmed two subdural haematomas on his brain. Mr A was treated palliatively in hospital and died a short time later.

Ms E, the registered nurse who assessed Mr A upon his arrival at the rest home, was found to have breached Right 4(1) of the Code in failing to ensure services were provided with reasonable care and skill. Ms E did not carry out any physical or behavioural assessments, and responded inadequately when Mr A began to deteriorate. Though she was junior and had no experience in geriatric care and was working with little support, she failed to provide appropriate assistance for Mr A's caregivers, to provide adequate oversight in the administration of Mr A's medication, and to relay important information about his behaviour to doctors.

Ms F, the rest home manager, was found to have failed to take sufficient steps to familiarise herself with Mr A and the care being provided to him. Accordingly, Ms F breached Right 4(4) of the Code by failing to ensure the services provided minimised potential harm to Mr A or optimised his quality of life.

Norfolk Court was found to have breached Rights 4(1), 4(2) and 4(4) of the Code. The Commissioner noted the inadequacy of policies and procedures and insufficient guidance and information provided to staff at the rest home which impacted on the services provided to Mr A. Norfolk Court failed to ensure it had sufficient qualified staff on duty, and did not take reasonable action to give effect to Mr A's rights under the Code. Norfolk Court was referred to the Director of Proceedings.

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News

Biotechnology

CSL safe from legal action on flu needle

Taxpayers have indemnified pharmaceutical giant CSL Limited against any lawsuits flowing from the swine flu vaccine.

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Mesoblast product gets TGA licence

Mesoblast Limited has received approval to market an adult stem cell product designed to repair and regenerate damaged tissues to doctors and hospitals.

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E-Health

E-Health plan misses patient safety mark say doctors

Doctors say the Federal Government's plan for personally-controlled e-health records is a distraction from the main game of delivering shared, secure electronic medical records that will actually improve patient safety.

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General Health

Patients want more time with their family doctors

Recent research conducted for the AMA by Essential Research found that 66 per cent of patients think that getting enough time with their family doctor is very important to their health.

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Health reform plan losing State support: AMA

The Australian Medical Association says a key part of the Federal Government's health plan has lost the support of some States.

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AMA releases health policy platform

The AMA has released Key Health Issues for the 2010 Federal Election - a summary of the major health issues that the AMA considers must be addressed by the major parties during the election campaign.

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Confidentiality breaches by Medicare staff

Medicare has revealed that 51 staff members made "unauthorised access" to customer information held by the agency in the first six months of 2009-2010.

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Hospitals

"Fatal mistakes repeated in hospitals"

The same fatal mistakes are made again and again in hospitals because recommendations made after one death are not followed across the State, former NSW Deputy Coroner Carl Milovanovich says.

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Pharmaceuticals

Breast cancer drug 'still safe' for Australian women

A breast cancer treatment drug which may be banned in the US is still safe for use in Australia, its manufacturer says.

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Vioxx cases urgent: barrister

The Federal Court should expedite the cases of hundreds of Australians who had heart attacks after taking the anti-arthritis drug Vioxx a barrister has argued.

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New Zealand

Disappointment with hospital death inquiry

The family of a Dunedin man who committed suicide at Christchurch's Hillmorton Hospital are "disappointed" with the outcome of an inquest.

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Patient spikes swamp North Shore Hospital

North Shore Hospital's emergency department has struggled to cope with spikes in patient numbers over the past few weeks, with many being treated in corridors.

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Heath lab staff take industrial action

Public hospital radiographers and laboratory workers have resumed industrial action over a lack of progress in pay talks with district health boards.

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