

10 August 2012

Social Policy and Justice
Ministry of Justice

Victims Reference Group question

I refer to our email to you on 22 May 2012 regarding the following question from the Victims Reference Group:

“Do you think victims of crime of a sexual nature should be able to make an informed choice about whether they wish to receive care relating to that offence, from a health provider who has him/herself faced disciplinary charges and/or conviction for sexual exploitation/sexual violence against patients and/or the public in general?”

This question is not so much about whether a victim of a crime of a sexual nature (a victim) should be able to make a decision about care provision; rather it raises important issues about privacy and the right to information.

There may be instances where a provider's complaint, disciplinary and/or conviction history is in the public realm and thus freely available to a victim to enable them to make a choice about whether to receive services from that provider. Publication of such information may occur following a disciplinary hearing in the Health Practitioners Disciplinary Tribunal where no name suppression has been granted, after being named following a criminal conviction, and/or (rarely) through the HDC in accordance with HDC's naming policy.¹ However, generally a provider's complaint, disciplinary, and/or criminal history is information that is private to that individual.

Other than in exceptional circumstances, the HDC will not release a provider's complaint history when asked by a member of the public to do so, because it is generally considered that the privacy interests of the provider outweigh the public interest in disclosure. However, when a victim is receiving health or disability services from a provider, that victim has certain rights under the Code of Health and Disability Services Consumers' Rights (the Code). For instance, Right 6(1) of the Code states that every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive. I consider that, in some cases, a reasonable person in a victim's circumstances (depending on those actual circumstances) would expect to receive information about a provider's complaint, disciplinary, and/or criminal history, insofar as it contains issues of sexual exploitation and/or sexual violence. Accordingly, if a provider who is providing such services to a victim has such a history, the provider may, in some cases, be required to disclose

¹ See: <http://www.hdc.org.nz/media/18311/naming%20providers%20in%20public%20hdc%20reports.pdf>.

that history. In addition, if a victim or representative of a victim asks about the provider's history in that regard, honest answers must be given.

In my view, there are a series of checks (beyond provision of information by the provider) that ensure protection for victims of crime presenting for care relating to that crime, with the primary protection being the employer of the particular health care provider. An employer should ensure that all staff involved in providing care to victims are suitable to provide such services. A further protection is provided by registration authorities in relation to registered health practitioners. Where a registered health practitioner² has faced disciplinary charges and/or conviction for sexual exploitation or other sexual offences, that provider's registration authority will likely carefully monitor that practitioner's suitability to practice, in accordance with that authority's responsibilities under the Health Practitioners Competence Assurance Act 2003. The authority may also impose restrictions on the practitioner's practice. Finally, it would be prudent for those involved in referring victims to health care providers to compile a "safe to receive" list of providers to ensure that victims are only referred to appropriate providers.

² Registered in accordance with the Health Practitioners Competence Assurance Act 2003.