

## **Psychiatric assistant breaches Code following indecent assault of inpatient**

**21HDC02334**

The Deputy Health and Disability Commissioner has found a psychiatric assistant has breached the Code of Health and Disability Services Consumers' Rights after he indecently assaulted an inpatient in a mental health unit.

Dr Vanessa Caldwell said the assistant breached Right 4(2) which gives people the right to services that comply with legal, professional, ethical, and other relevant standards. She also found he had breached Right 2 which provides the right to freedom from discrimination, coercion, harassment, and exploitation.

Dr Caldwell said, "...an inherent power balance exists between a consumer and a health care provider. This arises from the nature of the relationship and is more pronounced in contexts such as this. ...Mr A was a vulnerable consumer, and he should have been in a place of safety."

The psychiatric assistant has been convicted of indecent assault and subsequently sentenced. Dr Caldwell commented that, noting the actions that were taken by the justice system in response to this case and he would no longer be working in health care, further recommendations for actions were not required.

She added, "Given the seriousness of Mr B's breaches of the Code, I considered making a referral to the Director of Proceedings to consider further legal remedies. However, I have respected the expressed request from Mr A not to proceed with this action, and I acknowledge the distress these events have caused already."

Dr Caldwell also made an adverse comment regarding Te Whatu Ora saying there should have been further consideration of the care needs of the man following his disclosure of the incident.

She said that, despite Te Whatu Ora instigating an immediate internal investigation, "there was a 'business as usual' approach to Mr A's care, which failed to acknowledge that he had been subject to an indecent assault while he was an inpatient of the very service that was supposed to be supporting him."

She was further critical of the organisation for not apologising to the man sooner given there were multiple opportunities to do so and the lack of any offer of specific support or assistance, throughout the investigation process or after the sentencing.

Te Whatu Ora has since formally apologised to the man for his experience while in its care. Dr Caldwell has recommended Te Whatu Ora develop a policy that outlines

how support would be made available outside the service itself for any patient who is a victim of staff assault.

Health and disability service users can now access an [online animation](#) to help them understand their health and disability service rights under the Code.

6 November 2023

***Editor's notes***

The full report of this case will be available on HDC's [website](#). Names have been removed from the report to protect privacy of the individuals involved in this case.

The Commissioner will usually name providers and public hospitals found in breach of the Code, unless it would not be in the public interest, or would unfairly compromise the privacy interests of an individual provider or a consumer.

More information for the media, including HDC's naming policy and why we don't comment on complaints, can be found on our website [here](#).

HDC promotes and protects the rights of people using health and disability services as set out in the [Code of Health and Disability Services Consumers' Rights](#) (the Code).

In 2021/22 HDC made 402 recommendations for quality improvement and providers complied with 98% of those recommendation.

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