

**Adequacy and appropriateness of
steps taken to ensure fitness to practice
15HDC01280, 13 June 2018**

*District health board ~ Orthopaedic surgeon ~ Credentialing ~ Complaints ~
Recruitment policy ~ Supervision ~ Right 4(1)*

The Health and Disability Commissioner (HDC) undertook an investigation regarding the adequacy and appropriateness of the steps taken by a District Health Board (DHB) to ensure that an overseas trained orthopaedic surgeon was competent to practise, including the steps taken to credential and supervise his practice, and the steps taken when concerns were raised about his practice.

An overseas trained orthopaedic surgeon applied for a job with the DHB in 2011. The recruitment policy at the DHB required at least two references, at least one of which needed to be from a previous manager (preferably the current or most recent manager). The DHB's credentialing checklist also required a written reference from colleagues within the last 12 months. When applying for the position, the orthopaedic surgeon had provided three written references from orthopaedic surgeons with whom he had worked overseas more than two years previously. The references alluded to communication difficulties, and noted concerns regarding demeanour and personality. .

Another orthopaedic surgeon acted as the orthopaedic surgeon's supervisor. The DHB had no guidelines or policies in relation to supervision requirements, and relied on clinicians adhering to the Medical Council of New Zealand supervision guidelines. The supervising surgeon advised HDC that he was not given enough time for supervision, and that in order to do the job properly he would have needed to drop clinical time.

During the orthopaedic surgeon's time at the DHB, complaints management was a manual process. An administrator received and acknowledged complaints before passing the complaint to the Service Manager or Business Manager for response. Three written complaints were received regarding the orthopaedic surgeon's manner of communication, personality, and demeanour. These complaints were dealt with in writing by the Business Manager, who reported discussing two of the responses with the orthopaedic surgeon. The supervising surgeon was not made aware of the complaints.

When a new Business Manager took over in 2014, she was not advised of any concerns regarding the orthopaedic surgeon. Further, the complaints database at the time did not name clinicians, and so an emerging pattern of concerns was not evident. No complaints were forwarded to the Human Resources Department, and the complaints policy did not provide guidance on situations where there were multiple complaints against one individual.

A fourth patient complained about the orthopaedic surgeon regarding communication issues and a failure to recommend appropriate surgery. By this time, the orthopaedic surgeon was no longer under supervision.

Later that month, a fifth complaint was made, where the care the orthopaedic surgeon had provided to a patient had resulted in the patient requiring revision surgery. No performance issues were identified in relation to this complaint. However, by late 2014/early 2015 the new Business Manager had identified that the orthopaedic surgeon was receiving more complaints than his orthopaedic colleagues, and this was raised with senior management.

In 2015, one of the orthopaedic surgeon's orthopaedic colleagues sent a formal letter of complaint to management stating that he would resign if his concerns regarding the orthopaedic surgeon were not dealt with. As a result, the Business Manager, Head of Surgery, and the Chief Medical Advisor decided that an external review of the orthopaedic surgeon's practice was required, and an extension to his contract was cancelled.

The external review report found that before moving to New Zealand the orthopaedic surgeon had received complaints while working overseas. The Head of Surgery and the Chief Medical Advisor, amongst others at the DHB, were aware of these complaints.

Findings

The DHB is subject to a legal duty to provide health services with reasonable care and skill. As part of this, the DHB has an obligation to take reasonable steps to ensure that its clinical staff are competent and fit to practise, in order to protect its patients. It has an obligation to select competent staff and monitor their continued competence; provide proper orientation and supervision of its staff; and establish systems necessary for the safe operation of its hospitals.

The DHB was found to have breached Right 4(1) for failing to have in place appropriate systems relating to recruitment and complaints management, which amounted to a failure in its duty of care. This was evidenced by its lack of care in how it employed the orthopaedic surgeon, most notably for failing to secure a recent reference, and by failing to have in place adequate systems to identify an emerging pattern of concerns, and to enable the appropriate staff to be aware of, and ultimately respond to, that emerging pattern. Further criticism was made in relation to the DHB's supervision and monitoring process and its processes around induction and orientation.

Recommendations

It was recommended that the DHB complete the following actions:

- a) Ensure that policies on recruitment are understood and followed, particularly in relation to the necessity of current referees, and of verbal reference checking — the content of which is fully documented. Clinical leaders, management, and human resources should share the accountability for this. The position

descriptions of the Service Manager and the Clinical Leader are to be reviewed to ensure that both parties understand their responsibilities in respect of recruitment of senior medical officers (SMOs), and in particular in respect of international medical graduates (IMGs).

- b) The supervision requirements for IMG locum tenens are outlined clearly in the MCNZ guidelines. The DHB should ensure that all supervisors are aware of their responsibilities. Particular care should be taken in respect of any pre-employment concerns such as those indicated in reference checking.
- c) Complaints regarding clinical staff should be shared with relevant professional clinical leaders, who in turn should contribute to the response.
- d) Data regarding numbers of complaints by individual practitioners should be monitored and, where there are more than two complaints in one year, or three in total, then consideration should be given to further investigation and, as appropriate, performance management.
- e) Complaints should be linked to adverse events in the incident reporting system, and reports provided to clinical leaders and management, who in turn should take joint responsibility for the review and resultant actions.
- f) The DHB should consider a formal policy for annual performance appraisal/professional development for all SMOs, and should develop a process whereby anonymous multisource feedback can be used in providing feedback about performance.
- g) Peer support/mentoring, independent of clinical supervision, could be considered for all IMGs in their first year of employment.
- h) Clinical leadership training should be provided for all clinicians in responsible roles, and could involve skills training in conflict resolution, clinical governance, and SMO performance assessment and management.
- i) Consideration should be given to performing yearly review of credentials for all IMG SMO appointments.