

**Informed consent in admitting respite care resident to rest home
(97HDC9172, 11 July 2002)**

Rest home ~ Respite care ~ Informed consent ~ Choice ~ Standard of care ~ Rights 4(2), 6(1), 6(2), 7(1), 7(2)

A man was admitted to a rest home as a short-term resident under pressure from his family. He complained that the admission was forcible and was made without his informed consent.

The man had nursed his wife of almost 20 years through a long illness. The wife had had a life interest in the house in which they lived, which was from an earlier marriage. Upon the wife's death, her family wanted the man to move out. Exhausted and grieving, he threatened to commit suicide and burn down the house.

The man's daughter by his first marriage had married his wife's son by her first marriage. There was a history of family difficulties.

Two days after the wife's death, the daughter telephoned a rest home to enquire about the services available and their cost. She said that the man was distressed, making threats, and had nowhere to live, and so needed respite care for a fortnight. Three days later she telephoned the rest home to say she would be bringing in her father the following day.

The rest home proprietor had some idea of the family background through church connections. The rest home had a reputation for good 24-hour care and for taking difficult clients.

The daughter asked the local minister and his wife to accompany them to the rest home. The man was resting and did not know about the daughter's plans. When he refused to go for a drive, he was forcibly removed from the bedroom and taken to the car.

The rest home proprietor did not know the full circumstances of the man's transportation but could see that the man was distressed. He spoke to the man in the car, with the church minister, while the family went to the office area. The man wanted to go home. However, it was late in the day, the family wanted the man out of the house, and the man was distressed. The proprietor felt he had a "special duty of care" to assist the man. He calmed down the man and persuaded him to stay at the home for a fortnight's rest. The man left the car voluntarily to view the room put aside for him.

There was a four-page admission form to be signed, and disagreement arose as to who had signed which forms, and in what capacity. The rest home claimed that both the man and his daughter were provided with information regarding terms and costs, and both signed the forms, separately taking responsibility for the payment of fees.

The man does not recall signing any forms. However, his signature appears on the form authorising the collection of health information, and on a form saying he did not want to retain control of his financial affairs. He did not want the rest home or the admitting agent to manage them, but instead authorised the home's proprietor to personally manage his affairs; the proprietor did not sign acceptance of that responsibility.

The daughter signed that she was the “admitting agent”, thereby affirming that she was “authorised to act on behalf of the resident and ... personally shall be bound ... to this contract of care ...”.

The man stayed at the home for two weeks, after which he left and eventually set himself up in a flat. A dispute arose between the man and the home regarding who was liable for paying the fees incurred during his stay at the home. There is disagreement over whether the man knew about the fees and his liability for them before or after he was admitted to the home. The Commissioner was satisfied that it was after entry to the home.

The key was whether the man’s rights to be given information and to make a choice (ie, consent, not mere acquiescence) were respected. Right 7(2) presumes a consumer is competent. In this case, the rest home was aware that the man was competent. He was therefore entitled to the informed consent process, which consists of: (1) effective communication between parties; (2) provision of all information necessary to make an informed decision; and (3) the consumer’s freely given and informed consent.

The man was not given the information he needed about the services available and the terms and conditions, including costs and liability for those costs (Right 6(1)). This information was given to his daughter, who was not his authorised agent, regardless of what she had filled out on the admitting forms. Moreover, given the difficult family situation, of which the proprietor was aware, the daughter was seeking and receiving the information on her own behalf and not that of her father.

Even if the man had read and signed all of the admission forms, they did not contain information in enough detail to ensure an informed choice could be made (Right 6(2)). Under Right 6 of the Code, relevant information must be voluntarily disclosed to the consumer: it is not enough to answer any questions asked by the consumer. The issue was not whether the proprietor felt he had a “duty of care”, but whether the man chose to accept the care offered and the terms attached to it (Right 7(1)). In these circumstances, the rest home breached Rights 6(1) and (2), and 7(1) of the Code.

In settling the man into the home, and in genuinely trying to assist him and his family in a difficult time, the rest home met the Ministry of Health’s Standards of Care for Old People’s Homes, and so did not breach Right 4(2).