

Strictly adhering to guidelines important in maintaining professional boundaries

19HDC02321 and 19HDC02308, 2 May 2022

This case relates to two complaints regarding the conduct of a nurse working in a hospital's emergency department (ED). The complainants, broadly, both allege that the nurse touched them inappropriately and behaved inappropriately while performing nursing duties. The two incidents occurred within a week of each other.

The Deputy Commissioner considered that the evidence of the complainants, was to be preferred over the evidence of the nurse (who, broadly, denied that most of the alleged behaviour occurred). The first complainant was admitted to the DHB ED with severe abdominal pain. She has chronic endometriosis, and a management plan for when she presents to hospital with pain. The first complainant alleged that the nurse lifted her clothing to expose and look at intimate parts of her body (at her breasts and down her underwear), and that there was inappropriate physical contact when the nurse was providing other care.

The second complainant was a patient in the medical short stay unit at the DHB, after presenting to ED because her percutaneous endoscopic gastronomy (PEG) tube had fallen out. She has complex and chronic conditions. The second complainant alleged that while the nurse was changing the IV dressing on her arm, the nurse had put his hand in her bra and rubbed her breast.

Findings

The Deputy Commissioner found that the nurse deliberately and inappropriately touched and/or viewed intimate parts of the first complainant's body on several occasions, and that this amounted to a serious failure to provide services in a manner that respected the consumer's dignity. Accordingly, the nurse was found to have breached Right 3 of the Code of Health and Disability Services Consumers' Rights (the Code). The Deputy Commissioner also found that the nurse failed to provide the first complainant with information about the nature of the abdominal exam, including whether and how her clothes would be moved, which she needed to give informed consent to that examination. Accordingly, the nurse was found to have breached Rights 6(2) and 7(1) of the Code.

In respect of the second complainant, the Deputy Commissioner found that the nurse put his hand inside the second complainant's clothing and rubbed her skin in the area of her breast, and that this amounted to a serious failure to provide services in a manner that respected the consumer's dignity. Accordingly, the nurse was found to have breached Right 3 of the Code. The nurse also failed to document the care provided to this complainant, and accordingly breached Right 4(2) of the Code.

The Deputy Commissioner found that the DHB did not breach the Code.

Recommendations

The Deputy Commissioner recommended that the nurse provide written apologies to the two complainants and that, should the nurse reapply for a practising certificate, the Nursing Council assess the appropriateness of him returning to nursing and

determine any necessary conditions on his practice, supervision and monitoring, and training needs.

The nurse will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.

The Deputy Commissioner recommended that the DHB consider whether it is necessary to provide ED staff with refresher training on issues around chaperones, patient communication, adequacy of consent, and documentation.

2 May 2022