

**Assault of rest home resident  
(07HDC20395, 28 August 2008)**

*Registered nurse ~ Rest home ~ Assault ~ Vicarious liability ~ Rights 4(2), 4(4)*

The Nursing Council of New Zealand complained about the care provided to an elderly woman in a rest home by a registered nurse. A caregiver witnessed the registered nurse shouting at and slapping the woman while he was dressing a skin-tear on her arm. The caregiver reported the incident to her supervisors. Following an internal investigation, the registered nurse was dismissed and the Nursing Council of New Zealand was advised.

Acting in this way towards an elderly and vulnerable patient is a very serious departure from professional standards. The registered nurse also failed to follow correct procedure and did not document either the skin-tear or the woman's subsequent agitation, and was held to have breached Right 4(2).

It was also held that the rest home did not provide the woman with services that minimised potential harm, breaching Right 4(4). The rest home management acknowledged that there were concerns about the registered nurse but these concerns were not formally investigated, and nor did he receive appropriate training and appraisals. The rest home was therefore held vicariously liable for the registered nurse's breach of the Code.

The registered nurse was referred to the Director of Proceedings, who laid a charge before the Health Practitioners Disciplinary Tribunal. In a decision dated 26 March 2009, the Tribunal found the nurse not guilty of the charge of slapping the woman on the arms. It held that while evidence disclosed a disquieting situation, because of the way the charge was framed they needed to be sure that the nurse deliberately intended to slap the woman. By a narrow margin the evidence before it did not satisfy the Tribunal to the requisite standard that the charge had been proved. They declined to grant the registered nurse name suppression but granted permanent name suppression to the rest home, the staff involved, and the consumer.