A Private Hospital

A Report by the

Deputy Health and Disability Commissioner

(Case 07HDC09104)

Parties involved

Mrs A (dec)	Consumer
Ms B	Complainant/Consumer's daughter
Ms C	Provider/Manager, the private hospital
Dr D	Provider/Medical Officer
Ms E	Enrolled Nurse, the private hospital
Ms F	Operations Manager, the private hospital
The private hospital	Provider/Private hospital

Complaint

On 25 May 2007, the Commissioner received a complaint from Ms B about the services provided to her mother, Mrs A. The following issues were identified for investigation:

- *The appropriateness of the care provided to Mrs A by a private hospital from 14 to 15 May 2007.*
- *The appropriateness of the care provided to Mrs A by Dr D from 14 to 15 May 2007.*

An investigation was commenced on 24 August 2007.

Information reviewed

Information from:

- Ms B
- Ms C
- Ms E
- Dr D
- Owners of the private hospital

Information gathered during investigation

In May 2007, Mrs A, aged 81, was a resident of a private hospital.[1] She required the assistance of staff for most of her activities of daily living, and her daughter, Ms B, held Enduring Power of Attorney (EPOA) in relation to her property, care and welfare.

On 14 May 2007, Ms B visited her mother at midday and found her "very unwell", much worse than on a visit 24 hours earlier. Ms B stated:

> "I requested that a doctor attend to my mother immediately, giving my mother a complete physical examination. I was assured by the manager [Ms C] that she would personally take care of the matter and make sure my mother was attended to. Because of the way [Ms C] spoke to me I was immediately suspicious of her intentions, I walked away then returned to her to confirm that my request was clear and fully understood. Then less than an hour later, when my mother had severe pain spasms, I approached [Ms C] for a third time to reinforce my request. This time when I saw her she was in the middle of a meeting with a nurse … That was when I was able to inform the nurse as well that I was requesting a doctor visit my mother, and give my mother a full examination, paying attention to her bowel. The nurse agreed with me.
>
> As I had to leave the hospital to attend to other matters I phoned [Ms C] at 1.45pm to see if the doctor had been yet. I was told that he had been called but had not yet arrived. I was told that my mother was now resting comfortably and that as the doctor would be visiting soon there was nothing to worry about."

At this time, Ms C was the manager of the private hospital. She stated in a letter dated 10 September 2007 to this Office:

> "[A]fter a request from [Ms B] for the doctor to see her mother, I contacted [Dr D]. He informed me that he was already coming in to see another patient and would see [Mrs A] then. He could not come any sooner.
>
> I told a nurse on duty that [Dr D] was to see [Mrs A].
>
> After a second approach by [Ms B], the senior [registered nurse] checked on [Mrs A] and found her sitting up in bed having a cup of tea. She reported her as being quite comfortable at this time.
>
> Having put all the arrangements in place for the visit by the doctor I did not think to check whether indeed it did happen."

[T] The private hospital is certified to provide hospital level care, and holds an Age Related Care Contract with the District Health Board to provide residential care services.

In contrast, the private hospital's Operations Manager, Ms F, stated in a letter to this Office dated 6 September 2007:

> "I have … spoken with [Ms C] and she informs me that she did not speak directly with [Dr D], rather, having established he would be visiting the facility to attend another client, she requested EN [Ms E] to ensure that [Dr D] review [Mrs A] at that time."

Enrolled Nurse Ms E was the nurse approached by Ms C to request that Mrs A be seen by Dr D. Ms E stated:

> "[Ms C] came to me and asked if I could ask [Dr D] to see [Mrs A] as he was there anyway seeing other residents at the time. The reason was because [Mrs A's] daughter was concerned about her mother who appeared to be in pain."

Dr D explained the relationship between his employer and the private hospital:

> "[My employer was] the contracted Doctor Service to [the private hospital] from 2003 up to October 2006. I was the doctor that did the regular ward rounds and [the Doctor Service] provided the after hours cover for all acute visits, up to that date.
>
> The contract was terminated by [the private hospital] on 31 October 2006, we are presuming from their change of ownership to [another owner] that year.
>
> …
>
> [The private hospital] then had the status of non-contracted Rest Home or Private Hospital to [the Doctor Service]. They could call us out to see patients on an acute basis.
>
> ..
>
> [The Doctor Service] has been called from time to time to see patients acutely there, which has been done."

Dr D visited the private hospital later that day of 14 May 2007. Ms E said that when Dr D visited she asked him to review Mrs A. Ms E stated:

> "[Dr D's] response was that he was not asked to see [Mrs A] in addition to the other residents he was seeing and he did not allow enough time to see an extra resident. He also said that he did not know [Mrs A] and left the premises."

In contrast, Dr D said:

> "I was not requested to see [Mrs A] [on 14 May 2007]."

Ms C stated:

> "[Dr D] was 'too busy' to see [Mrs A] despite the nurse's request. He had discussed this patient with the nurse as she ([Mrs A]) was apparently comfortable at the time, he advised the nurse to keep monitoring her."

The clinical record for 14 May 2007, written at 10pm, only states:

> "No complaints — Given [laxative]."

On the following day, Ms B visited her mother again. Ms B stated:

> "When I arrived at the hospital for a visit next morning at just before midday I was kept out of my mother's room for fifteen minutes whilst the care-givers attended to her. This had never happened before and I thought it very strange, but understood why when I was finally allowed in. My mother was writhing in agony. When I asked her what the doctor had said she told me that she had not seen a doctor. I immediately stormed down to see [Ms C] and was told by [her] that a doctor had indeed seen and physically examined my mother, and that my mother was too 'confused' to remember it. I knew this was not the case and challenged [Ms C] on this. [She] then said that the doctor had indeed been called but had chosen not to see my mother. She said this was a common occurrence with doctors, who often intimidated hospital care-giving staff. …"

Ms B also recalls that Ms C:

> "looked me in the eye … and informed me that the management of [the private hospital] was nothing to do with her, that she was a 'paper-pusher' and that the care of the patients was the responsibility of other hospital staff."

Ms B then asked her mother if she wanted to stay at the private hospital or go to a public hospital, and she immediately asked to go to the public hospital. Ms B arranged for an ambulance, and Mrs A was transferred to a public hospital, where she was diagnosed as being constipated, with pain secondary to haemorrhoids. She was discharged back to the private hospital on 16 May 2007. Mrs A died a few days later.

The private hospital's response to this event

Ms F advised that some changes have been made at the private hospital since this incident. These include the appointment of a permanent facility manager, and the appointment of a new GP.

Registered Nurses and Enrolled Nurses have been given training regarding their responsibilities in directing caregivers with care delivery and the provision of appropriate and effective care to clients.

Additionally, all staff have been reminded to adhere to policies and procedures around care delivery to clients.

In a letter to Ms B dated 28 June 2007, Ms F apologised for the failure to ensure that Mrs A was reviewed by a doctor.

Ms C
Ms C's job description as facility manager states that the main purpose of her role was:

> "To manage staff and resources to ensure the delivery of safe and effective, quality life and health care services are provided to all residents within the facility."

The following key activities are also set out:

> "Ensures effective communication and teamwork with the staff and residents and families/whanau.
>
> …
>
> Ensures excellent standards of clinical practice are implemented, and Gerontological best practice is delivered at all times."

Ms C no longer works at the private hospital.

Complaint
Ms B said she complained because:

> "I find the whole episode appalling, and I am completely overwhelmed by the length of time I was lied to, the length of time my mother was left writhing in agony, and the complete refusal of [Ms C] to accept any responsibility for what happened."

Response to provisional opinion

Ms C
Ms C stated:

> "During April/May 2007 I acted as Interim Manager at [the private Hospital] on a day-to-day basis. Despite this arrangement, whilst I was there I took full responsibility for the management and care of the facility.
>
> I resent the implication in the statement that '[Ms C] no longer works at [the private hospital]."

Regarding the misleading response given to Ms B when she asked if Dr D had attended Mrs A, Ms C said:

> "At the time I made the response I was certain that this was what had occurred. I had not been informed that the consultation had not taken place.
>
> I had requested that [Dr D] see [Mrs A] when he visited the hospital to see another patient. I realise he was not the facility GP, nevertheless I presumed that as he was aware of the current situation at [the private hospital] (there being no facility accredited GP) he would attend any patient when asked to do so. I was also not in the habit of following up on the trained staff at any facility I had worked at, to see if they had followed my instructions. I erred also, in not putting my instructions in writing.
>
> Having heard nothing to the contrary I presumed that [Dr D] had seen [Mrs A]. I did not 'deliberately' try to deceive [Ms B] as accused. I am not in the habit of lying to anyone — I fail to see the significance of the fact that [Ms B] had EPOA. It's like you are saying if she didn't it would have been alright to lie?
>
> The following day when I became aware that the GP had not seen [Mrs A], I requested the nurse involved phone [Ms B] and inform her of what had happened and apologise. She reported to me when she had done so and said that [Ms B] had accepted both her apology and explanation.
>
> When [Ms B] did arrive later that morning and demanded her mother be admitted to hospital I contacted the ambulance and ensured all paperwork was in order to accompany her.
>
> I am sorry for the concern and distress that [Ms B] suffered in her endeavours to get the best care for her mother, however I totally deny the statements she attributes to me 'that I was a paper-pusher and that the care of the patients was the responsibility of other hospital staff'.
>
> My major crime is that I failed to follow up on instructions I had given to ensure they had been carried out, and that I did not document the meetings with [Ms B].

> I also accept some responsibility for the standard of care although I had little time in the position to ascertain said standards at this facility — I did not expect to have to ensure that progress notes were written and/or instructions documented — normal procedures in all aged care facilities."

Ms C said that she took responsibility for Ms B's distress over this incident but felt she was being made a scapegoat for the breakdown in services provided by the private hospital.

The Private Hospital
For the private hospital, Ms F stated:

> "[W]e believe that it is a fair and reasonable account and have no additional comments to make. We have read the report fully and take on board the comments and recommendations suggested by Ms Lamb and I confirm that we have implemented corrective action to this effect."

Ms B
Ms B agreed with the summary of events.

Code of Health and Disability Services Consumers' Rights

The following Rights in the Code of Health and Disability Services Consumers' Rights are applicable to this complaint:

Right 4

Right to Services of an Appropriate Standard

…

(3) Every consumer has the right to have services provided in a manner consistent with his or her needs.

Right 6

Right to be Fully Informed

(1) Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive …

…

(3) Every consumer has the right to honest and accurate answers to questions relating to services …

Opinion

This report is the opinion of Rae Lamb, Deputy Commissioner, and is made in accordance with the power delegated to her by the Commissioner.

Opinion: Breach — The private hospital

When Ms B visited the private hospital on 14 May 2007, she found that her mother's condition had deteriorated significantly since the previous day, and she was "very unwell". As a consequence, Ms B asked the manager, Ms C, on at least three occasions for a doctor to review her mother. As Ms C knew that Dr D was visiting later that day to review another resident, she asked Enrolled Nurse Ms E to request that Dr D assess Mrs A. When Ms B left her mother, she believed that a doctor would visit later that day to review her.

Although it is unclear what occurred when Dr D visited later that day, what is not in dispute is that he did not review Mrs A. Dr D stated, quite simply, that he was not asked to review Mrs A. Ms E said that she asked Dr D to review Mrs A, but he refused. However, she made no record of this refusal, nor did she advise anyone else at the time of this refusal. Had Dr D refused to review Mrs A, Ms E should have referred this matter to a more senior colleague. At the very least, she should have documented the events of the afternoon and evening. The fact that she did not document her claimed interactions with Dr D undermines her assertion that such a conversation occurred.

From the evidence available, it seems probable that Dr D was not asked to review Mrs A. The failure to ensure that Mrs A was seen by a doctor is troubling. I am concerned that the private hospital did not have a functioning system for ensuring that a doctor was called and visited when the daughter of a vulnerable resident had approached staff with a significant concern, and requested a medical assessment. There appears to have been reliance on word of mouth between Ms C and Ms E to ensure that Mrs A was reviewed, with no documentation of the plan or Ms B's concerns. In fact, there was no record of *any* concern about Mrs A's health on 14 May 2007, with the clinical records silent apart from a brief comment at 10pm saying that she had "no complaints". The lack of a record undermines the evidence from Ms C and Ms E.

Clause 4 of the Code of Health and Disability Services Consumers' Rights (the Code) states that for the purposes of Right 6, "consumer" includes a person entitled to give consent on behalf of that consumer, such as the holder of an Enduring Power of Attorney (EPOA). The effect of this provision is that the attorney (Ms B in this case) has a right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive. In this case, I consider that the staff of the private hospital should have advised Ms B on 14 May 2007 of the reasons why her mother had not been reviewed by a doctor as requested.

Summary
In my opinion, the staff at the private hospital did not provide services in a manner consistent with Mrs A's needs. They failed to ensure that she was reviewed by a doctor, and therefore breached Right 4(3) of the Code.

As Ms B held EPOA in relation to her mother's care and welfare, staff were also required to inform Ms B of the outcome of her request for a medical review. By failing to do so, the private hospital also breached Right 6(1) of the Code.

Opinion: No further action — Dr D

Dr D claims that he was not asked to review Mrs A on 14 May 2007. In contrast, Ms E claims that she spoke to Dr D, and that he refused to review Mrs A. Ms C also stated that she was told (presumably by Ms E) that a nurse (again, presumably Ms E) and Dr D had discussed Mrs A's condition, and that he recommended that the nurse continue to monitor her condition.

In the light of conflicting statements from the nursing staff, and the lack of documentation to back up the claim that Mrs A's condition was discussed with Dr D, I intend to take no further action against him.

Adverse comment — Ms C

When approached by Ms B with concerns about her mother, Ms C asked Ms E to ensure that Dr D, who was visiting later that day, review Mrs A. This was an appropriate response by Ms C, although she should have made a record of her order.

Of greater concern are Ms C's actions of the following day. On 15 May, Ms B was worried about her mother's condition, and had been told by her that no doctor had attended. At this point, Ms B confronted Ms C, asking why a doctor had not reviewed her mother, despite her specific request. In answering this legitimate query, Ms C gave

a misleading response — that Dr D had reviewed Mrs A, but she was too confused to recall his visit. Ms C only admitted that Dr D had not seen Mrs A when challenged by Ms B.

I also note that Ms C told Ms B "that the management of [the private hospital] was nothing to do with her, that she was a 'paper-pusher' and that the care of the patients was the responsibility of other hospital staff".

Ms C has denied that she deliberately tried to deceive Ms B, and said her comments were based on a presumption that the doctor had seen Mrs A. She also denies the comments attributed to her by Ms B.

Regardless of this, it is very clear from Ms C's job description that she was responsible for the "delivery of safe and effective care". Her key activities included ensuring "effective communication and teamwork with the staff and residents", and ensuring the implementation of "excellent standards of clinical practice". In this case, Ms C did not fulfil these obligations. I note that she has provided an apology for Ms B, and I have reminded her of her obligations under the Code. I do not believe that she is being treated as a scapegoat for failures by the private hospital.

Recommendations

I recommend that the private hospital:

- Apologise to Ms B for its breaches of the Code. The apology is to be sent to my Office for forwarding to Ms B.

- Arrange an independent review of the nursing documentation at the private hospital, with the results of the review to be sent to the Health and Disability Commissioner's Office by **1 February 2008**.

I recommend that the Ministry of Health and the District Health Board consider whether an audit of the private hospital is warranted.

Follow-up actions

- A copy of this report will be sent to the Ministry of Health and the District Health Board.

- A copy of this report, with details identifying the parties removed, will be sent to the New Zealand Nurses Organisation, the Nursing Council of New Zealand, HealthCare Providers New Zealand, and Age Concern, and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name.