



**Office of the
Health Complaints
Commissioner
2007**

700-0505057 – Public Hospital – Stroke - Capacity – Application to Guardianship and Administration Board

Section 25(1)(c), (d) & (e) of the *Health Complaints Act 1995* – a health service provider acted unreasonably in the manner of providing a health service - a health service provider failed to exercise due skill - a health service provider failed to treat a health service user in an appropriate professional manner
Finalised November 2006

The complainant lodged a complaint about the Launceston General Hospital (LGH) for making application to the Guardianship and Administration Board (G&AB) based on concerns held about her capacity to make decisions about her financial affairs and lifestyle matters following a severe stroke. The complainant was also critical of the diagnosis, treatment and care she received at the hospital's Department of Emergency Medicine (DEM) and during her 8-month hospitalisation.

The complainant had presented at the hospital's DEM on two occasions with left sided weakness, slurred speech, photophobia, dull headache and neck pain. She was sent home following assessment on both occasions. Two days later she was admitted to a private hospital where she was diagnosed with brain stem infarcts. Six days after her discharge from the private hospital she presented at the public hospital's DEM due to further deterioration and was admitted.

The expert opinion obtained on the assessment and diagnosis at the DEM concluded that the incorrect diagnosis was made on the second presentation and it may have been prudent to admit the complainant at that time. However, it was not possible to determine whether her admission would have altered the occurrence of the ischaemic infarcts.

A review of the hospital medical records revealed that the complainant received the requisite standard of care expected for a person recovering from a stroke. There was evidence that difficulties were experienced by staff in their interactions with the complainant relating to her insight into her abilities and concern regarding decisions which appeared to the staff as being irrational.

A psychiatrist reviewed the complainant and recorded that she had "*inappropriate effect*", "*little insight*" and her "*capacity [was] impaired.*" The complainant attempted suicide by overdose. The psychiatrist noted that she was "*not able to appreciate the risks of going home...I am worried about her likely ongoing suicide risk . . . I do not believe that [she] has capacity as she cannot appreciate the*

consequences of her decisions...A Guardianship Order is necessary to keep her safe and facilitate her placement.” The hospital believed that neither the complainant’s husband or mother were a suitable ‘person responsible’ⁱ and made application to the G&AB to appoint a guardian to make decisions on the complainant’s behalf.

The complainant chose to self-discharge against medical advice. No home support or community services had been arranged at this time. The hospital made an emergency application to the G&AB. The complainant obtained legal representation for the hearing and incurred legal costs.

The findings of the investigation were that it was appropriate for the hospital to make an application to the G&AB in the circumstances however they should have informed her of the process, her rights and provided contact details of available advocacy and legal services.

The hospital agreed to make an ex gratia payment towards the complainant’s legal costs of \$550 and \$600 towards counselling. Further it agreed to appoint a staff member to take a lead role in any applications to the G&AB, that the person will receive training in relevant legislation, consult with all involved personnel and provide to the person subject to the application information regarding their rights and contact details of legal aid and advocacy services prior to an application being made.

- Approved for website
- Approved for Annual Report [theme or case summary]

Health Complaints Commissioner / Ombudsman

ⁱThe hospital staff were of the belief that the complainant’s husband lacked the ability to act as her ‘person responsible’ due to his difficulties in coming to terms with her condition. The complainant’s mother was also considered not to be able to make decisions in the complainant’s best interests due to comments she made to nursing staff following the complainant’s overdose.