



Not a barbecue stopper

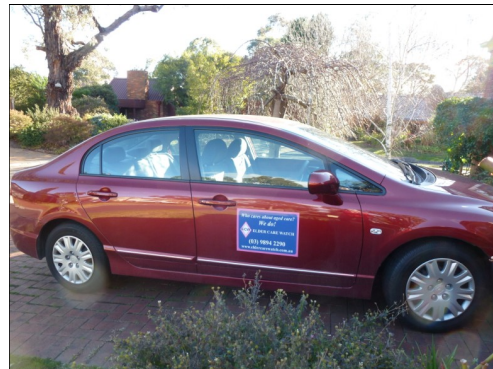
Some have called for a royal commission says Henry. *“But it’s not a barbecue stopper. There’s no fire in the belly at the political level to do anything about it. Where do you decide the priority should be? We care about abused kids. You also see the other end of life and they’re all hidden away”*

Catherine Henry quoted in T. Dalton, ‘Lethal care’,
Weekend Australian Magazine, 13-14 May 2017:18

Raising community awareness of aged care

something you can do

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Enrolled nurse guilty of professional misconduct for physical abuse of patients

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All too familiar *major infection neglected*

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Disappointment *Senate Committee Report on aged care workforce*

Media Release

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Editorial

In this edition we illustrate how individual nurses working in aged care can be held to account for poor care, or in this case for physical abuse. The *professional misconduct* happened in WA but it could have been anywhere in Australia because the law applies nation wide (*see pages 4-5*). The Nursing Boards in each state are very influential in deciding on the penalty imposed for professional misconduct.

The Law Reform Commission's final report on elder abuse (*May 2017*) retains its compulsory reporting recommendation calling it a "*serious incident response scheme*" but backs away from having the Complaints Commissioner as the body to whom providers must report and explain what action they took. The report just refers to "*an independent oversight body*". Regrettably, the Commission discards its earlier proposal for an *Official Visitors Scheme* arguing that reform efforts are better focused on establishing a robust serious incidents scheme (*Report:155*). The question is will the Government, surrounded as it is by aged care inquiries, adopt this scheme and amend the *Aged Care Act*? In the meantime, the narrow *reportable assaults scheme* continues to operate.

The Commission responds to the many submissions about grossly inadequate staffing by recommending that the Government commission, and then publish, an evaluation of existing research on optimal staffing in aged care to provide a benchmark to guide practice (*Report:127*). Providers won't mind this at all.

Just before Parliament rose for the long winter break, the *Senate Community Affairs Committee* tabled its report on the aged care workforce. It contains cause for hope but mostly cause for despair. For the first time since 1997 an inquiry has made a recommendation about staff:resident ratios. It is a weak recommendation however, namely that the government "*... examine the introduction of a minimum nursing requirement for aged care facilities*". Other than that, the report is just about more research, about more investigation and nothing about action (*see Media Release, page 8*). What is astounding about the Committee's considerable effort is the neglect of managers in the recommendations. They do not appear to recognise the crucial impact of the myriad of staffing decisions which managers make every day.

By the end of August, there will be reports on the *Aged Care Legislated Review* dealing with the 2012 *Living Longer Living Better* legislation and on the Minister's inquiry into regulation of aged care which examines the role of the Quality Agency, the Complaints Commissioner and the Department of Health.

Raising community awareness of aged care *take action for a cause you believe in*

As the Newcastle-based lawyer Catherine Henry says (*see page 1*) aged care is not ‘a barbecue stopper’.

If this ever changes it will be because caring people made it happen, people with a social conscience, people like you perhaps, who know there is serious abuse and neglect in many nursing homes and who are willing to make the effort to raise their voice, as the saying goes “*to raise their head above the parapet*”.

You can help to raise community awareness of aged care by displaying a sign on your car. This auto magnet does not mark your vehicle, is easily removed and put back, just like a fridge magnet, and has UV protection.



If you would like one of the signs for yourself or for family or friends just email Elder Care Watch (ecw2@bigpond.com) or phone (03) 9894 2290 and it will be posted to you free of charge. Let's help to make aged care a 'barbecue stopper'.

Enrolled nurse guilty of professional misconduct for physical abuse of three patients

This case provides an example of the public regulation of nursing practice. It shows how nurses can be made accountable for poor practice and penalties imposed. As often pointed out in this newsletter, there is no equivalent regulation for personal carers or assistants-in-nursing.

The workplace

The offences occurred in March 2015 in the Older Adult Mental Health Service ward of the Osborne Park Hospital (WA).

Agreement reached

The tribunal (State Administrative Tribunal, WA) made orders based on an agreement reached between the enrolled nurse, John Gibson (respondent) and the Nursing Board of WA (applicant) regarding the offences and the penalties imposed. This avoided the need for a formal hearing. The fact that the respondent reached agreement with the Nursing Board became a mitigating factor in deciding on the penalty he would receive.

Dismissal

Separately, the employer, Osborne Park Hospital, conducted an investigation into the allegations made against the enrolled nurse and then terminated his employment, effective 24 December 2015.

The offences

Professional misconduct

The professional misconduct related to the nurse's use of "*unnecessary and inappropriate force*" with respect to each of three patients and deliberately causing pain to one patient.

Breach of Code of Professional Conduct for Nurses in Australia

The Code of Conduct was breached because the nurse "*failed to respect the dignity of a person receiving care; failed to provide safe and competent nursing care; and failed to promote and preserve the trust and privilege inherent in the relationship between nurses and people receiving care*".

Source: State Administrative Tribunal, VR209/2016, 10 April 2017.

Legislation: Health Practitioner Regulation National Law (WA) Act, 2010, ss 5 and 196.

Disciplinary action against enrolled nurse

The nature of the abuse

The penalties imposed

The enrolled nurse's conduct

On the occasion of each offence John Gibson was working with other staff: with an RN and an EN (Patient A); with an RN (Patient B) and with a Nursing Assistant (Patient C).

The professional misconduct

Patient A

"...used unnecessary and inappropriate force by reason of having (i) held Patient A in a rough hold and (ii) pulled Patient A's feet along the floor to and from the bathroom"

Patient B

"...used unnecessary and inappropriate force by reason of him having (i) applied pressure to Patient B's upper and lower body, causing Patient B to fall backwards on to his bed and (ii) pressure to Patient B's upper body using his forearm to hold Patient B down on his bed".

"Deliberately subjected Patient B to pain by (i) applying pressure to Patient B's toes on two occasions and (ii) applied pressure over Patient B's wound dressing".

Patient C

".... used unnecessary and inappropriate force byhaving (i) pushed Patient C back on her bed by applying pressure to her head and upper body; and (ii) whilst Patient C was sitting in a shower chair, held Patient C's head right back".

State Administrative Tribunal,
VR209/2016, 10 April 2017, Annexure A

Penalties imposed

Registration as an EN suspended for eight months therefore unable to work;

Required, within three months, to undertake a Nursing Board approved program re safe manual handling (including assisting patients with restricted mobility) and the prevention and management of aggression in patients. Evidence of successful completion to be produced;

On return to employment, to be mentored over one month by another registered health practitioner in relation to manual handling with mentor's report going to the Nursing Board;

Provide the Nursing Board with the name of the Director of Nursing or Senior Practice Manager at each current place of practice so that AHPRA* can provide the manager with the conditions imposed on his employment;

Pay \$1,800 as a contribution to the Nursing Board's costs of appearing before the tribunal.

*Nursing Boards in each state operate under the umbrella of the Australian Health Practitioner Regulation Agency.

All too familiar: major infection neglected *lack of documentary evidence a salutary lesson for relatives*

In May 2017, ABC TV Adelaide reported on a family's distress with the neglect of their father in the Bupa Modbury nursing home back in 2012. They had gone public only after the home announced that investigation by the Complaints Commissioner and by the Coroner did not show that Bupa contributed to the resident's death.



Bupa, Modbury, SA
In January 2015: 51 residents, all high care

The daughter's description of the wound is horrifying and included:

“One of his hips, the bone was seriously just sticking out and then his coccyx was black, the skin had died and there was a hole that you could literally see inside of him”

Quoted in N. Gage, 'Bupa Adelaide nursing home accused of poor care following death of resident', ABC TV 7.30, 1 May 2017.

These images are reminders of the gangrene wound in the Opal Aged Care Leamington home case where there was no documentation for two weeks (*See May 2017 Newsletter:6*) and of the resident's necrotic heels in case 52 of *Operation Home Truths*.

The home passed all standards in an audit in January 2015 and also in a January 2012 audit.

For the abused resident all this is meaningless. The Quality Agency is not concerned with individual cases of poor care or abuse but rather with policies and procedures in general, essentially what is on paper. Also, the accreditation standards are minima, rather like a pass rate. It is not clear what contact, if any, the Agency assessors have with patients who are immobile or confined to bed and at high risk of pressure related infections.

This case shows the importance of relatives or friends keeping a diary record of what they observe, and to express any serious concerns promptly in writing. A written complaint is far superior to a verbal complaint. Elder Care Watch is one organisation which can provide guidance in preparing a complaint.

Aged care regulation inquiry *is there a conflict of interest?*

In May, Aged Care Minister Ken Wyatt announced an *independent* inquiry into the regulation of aged care which is to include examining the role of the Quality Agency, the Aged Care Complaints Commissioner and the Department of Health. But just how independent is this inquiry?



Ken Wyatt
Minister for Aged Care

Former member of Quality Agency Board to conduct inquiry



Kate Carnell

Kate Carnell was a member of the Board of Directors of the Accreditation Agency (now titled the Quality Agency) from 2008 to 2011. She is one of the two people appointed to conduct the inquiry. The other appointee is a New Zealand academic.

While the inquiry is in progress, Kate Carnell continues to make TV appearances in her current role as the Australian Small Business and Family Ombudsman.

Her response to the claim that she has a conflict of interest is that she understands the accreditation system (ABC TV [7.30](#), 3 August 2017).

Department of Health managing submissions

The secretariat function for the inquiry is apparently being managed by the Department of Health which is one of the agencies under investigation in respect of their role in regulating aged care. An online structured questionnaire is the preferred format for lodging a submission and the submissions go to a Department of Health email address. Elder Care Watch has made a submission to the inquiry .



The disappointing Senate Aged Care Workforce Report*

two new recommendations but mostly just recycling perennial problems

For the first time since the introduction of the 1997 Aged Care Act, an inquiry has made recommendations about minimum numbers of registered nurses and about transparency of staff:resident ratios. The Senate Committee in recommending that the government “*examine the introduction of a minimum nursing requirement for aged care facilities*” (Recommendation 8) has let the government off the hook however, by not advocating that the government act now on staffing. The issue could easily go on the backburner again.

The Committee also recommends staffing transparency namely, that the government “*consider, as part of ...consumer directed care, requiring providers to publish and update their staff to client (sic) ratios...*” (Recommendation 10). The rationale is that this would help consumers (*sic*) make informed decisions. Again, it is a disappointingly cautious recommendation.

Most of the other recommendations, 12 in a total of 19, amount to nothing more than a huge workload for a cumbersome Workforce Strategy Taskforce, inclusive of all imaginable interests. Even if well-resourced, its work could take years rather than months.

The litany of research tasks includes many chestnuts such as wages and career structures, skills, training and workforce data. Twelve years ago, another Senate committee lamented the lack of wage parity, the problems of recruitment and retention and the need to improve the sector’s image. That 2005 Committee also endorsed a ‘National Aged Care Workforce Strategy’ released in 2005 by the then Minister for Ageing, Julie Bishop (*Senate Community Affairs References Committee, Quality and equity in aged care, June 2005:14-15, 28*). Since then nothing of substance has been done by any federal government.

The 2017 Report does cover two topical issues: the competitive pressures between the disability and aged care sector workforces and the problems which ‘*consumer directed care*’ creates for informal carers and volunteers. But here again all that happens is that the Taskforce is asked to investigate.

The neglect of management

The Report’s neglect of management responsibilities in relation to staffing is confounding. Human resource management is a major management function. What have managers been doing since 2005? Are there perhaps some nursing home exemplars around we need to know about? Identifying success stories in people management. Now there is a matter worthy of research.

**Senate, Community References Committee, Future of Australia’s aged care sector workforce, June 2017.*

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