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HEALTHCARE UPDATE

HIGH COURT RESTRICTS COMMON LAW DUTY OF CARE WHERE HOSPITALS/ DOCTORS HAVE STATUTORY OBLIGATION TO DISCHARGE FROM INVOLUNTARY DETENTION

HUNTER AND NEW ENGLAND LOCAL HEALTH DISTRICT V MCKENNA [2014] HCA 44

On 12 November 2014, the High Court of Australia unanimously held that a hospital and a doctor did not owe a duty of care to the relatives of a man killed by a mentally ill patient who had been discharged from the hospital into the man's care.

This case provides some clear guidance on how the statutory obligations on doctors and hospitals to care for mentally ill persons in the "least restrictive" manner relate to, and can limit, a duty of care.

Facts

In July 2004, Phillip Pettigrove was involuntarily admitted to the Manning Base Hospital at Taree (the hospital) under the then *Mental Health Act 1990* (NSW) (the Act). Hunter and New England Local Health District (the Health Authority) is the health authority responsible for the hospital. Mr Pettigrove had a long history of paranoid schizophrenia and for many years had received treatment for his illness in Echuca, Victoria. Mr Pettigrove was admitted to the hospital while he was in New South Wales with his friend, Stephen Rose.

A psychiatrist and the medical superintendent of the hospital decided that Mr Pettigrove was a "mentally ill person" pursuant to section 9 of the Act. The psychiatrist spoke to Mr Rose and Mr Pettigrove's mother. A decision was made to admit Mr Pettigrove overnight and that Mr Rose would drive him back to Echuca the following day for him to be with his family and continue receiving medical treatment.

During the drive back to Echuca, Mr Pettigrove killed Mr Rose. Mr Pettigrove told police that he had acted on impulse, and killed Mr Rose because Mr Rose had killed him in a previous life. Later, Mr Pettigrove took his own life.

Mr Rose's mother and sisters brought proceedings for damages for psychiatric injury allegedly suffered as a result of Mr Rose's death. The trial judge found that the hospital and psychiatrist owed Mr Rose's relatives a duty of care, but that there was no breach of duty. Mr Rose's relatives successfully appealed to the New South Wales Court of Appeal. There was then a further appeal, by the Health Authority, to the High Court of Australia.

Decision of the High Court

The issue considered by the Court was whether either or both of the hospital and the psychiatrist owed Mr Rose, or his relatives, a relevant duty of care.

Relying on earlier authority, the Court commented that difficulties arise in determining whether a duty of care exists where the defendant (here, the Health Authority) is exercising a statutory power. To decide whether there was a duty of care in this case (and if there was, its nature and scope) the Court had to decide whether such a duty would be consistent with the provisions of the Act.

The Act provided that every function, discretion and jurisdiction imposed by the Act be, as far as practicable, performed or exercised so that "*any restriction on the liberty of patients and other persons who are mentally ill or mentally disordered and any interference with their rights, dignity and self-respect are kept to the minimum necessary in the circumstances*" (s 4(2)(b)).

This is consistent with section 20 of the Act, the Court's focus in this case, which provides that:

> *A person must not be admitted to, or detained in or continue to be detained in, a hospital under this Part unless the medical superintendent is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available to the person.*

Stated another way by the Court, the Act prohibited detention of a person unless the medical superintendent formed the opinion that **no** less restrictive care was appropriate and reasonably available.

Mr Rose's relatives complained that each of them was injured because a decision was made not to continue to detain Mr Pettigrove. But, the Court held, the hospital and psychiatrist had a statutory obligation **not** to detain or continue to detain Mr Pettigrove unless the medical superintendent had formed the opinion that there was no less restrictive care which was appropriate and available (eg care in the community setting in Echuca).

The Court considered that detaining a patient to minimise the risk of that person causing harm to others, **where less restrictive treatment was possible**, would be inconsistent with the requirement of the Act to minimise interference with the liberty of a mentally ill person.

In other words, where a doctor or hospital have a statutory obligation **not** to detain unless no less restrictive care was appropriate and reasonably available, they **do not have a duty of care** towards those who might be harmed by the patient if released. That kind of duty of care would be inconsistent with the statutory obligations to the patient.

Conclusion

Doctors and hospitals have difficult decisions to make when deciding how to manage involuntary patients. These decisions can sometimes have disastrous outcomes, as this case makes clear.

The Court's judgment reinforces the importance of a hospital's and a doctor's legislative obligations to mental health patients which (in this respect) are broadly similar across Australia. The legislative obligation to treat in the least restrictive manner is inconsistent with a common law duty of care towards those who may come into contact with a mentally ill person discharged from hospital. In those limited circumstances, the High Court decided, no such duty of care exists.

DLA Piper's Insurance team reported on the High Court's decision on the Insurance Flashlight Blog. Readers are encouraged to subscribe to the blog for current business and legal issues important to insurers, reinsurers, brokers and other insurance industry participants in the Asia-Pacific region. Click here to sign up.

MORE INFORMATION

For more information please contact:

Michael Regos
Partner
T +61 3 9274 5437
michael.regos@dlapiper.com

Paul Lamb
Senior Associate
T +61 3 9274 5222
paul.lamb@dlapiper.com

This update was co-authored by DLA Piper Solicitor, Carmendy Cooper.

DLA PIPER OFFICES

BRISBANE

Level 29, Waterfront Place
1 Eagle Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3229 4077
brisbane@dlapiper.com

CANBERRA

Level 3, 55 Wentworth Avenue
Kingston ACT 2604
T +61 2 6201 8787
F +61 2 6230 7848
canberra@dlapiper.com

MELBOURNE

Level 21, 140 William Street
Melbourne VIC 3000
T +61 3 9274 5000
F +61 3 9274 5111
melbourne@dlapiper.com

PERTH

Level 31, Central Park
152–158 St Georges Terrace
Perth WA 6000
T +61 8 6467 6000
F +61 8 6467 6001
perth@dlapiper.com

SYDNEY

Level 21, No. 1 Martin Place
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 4144
sydney@dlapiper.com

www.dlapiper.com

1202245670 ASL 11|14