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Friday, August 09, 2019

(Room 9)

16:30 - 17:30 Medicolegal Update - HDC, Privacy & Beyond

Medical Protection

HDC, PRIVACY AND BEYOND

GP CME CONFERENCE CHRISTCHURCH 2019

Dr Lucy Gibberd and Dr Samantha King

Medical Protection Medical Advisers

What will we be discussing?

1. HDC.
2. Privacy.
3. Enduring Power of Attorney.

The anatomy of an HDC complaint

The dreaded letter:

- Who should reply?
- Do you need consent?
- Contact MPS/your indemnifier.

[redacted] 2016

[redacted]

Dear [redacted]

Complaint [redacted]
Our ref: [redacted]

This Office has received a complaint fro[redacted]t, which raises concerns about the care provided to her s[redacted]s, by Dr [redacted] Medical Centre. A copy of this com[redacted] enclosed.

One of the Commissioner's functions, as set out under section 14(1)(m) of the Health and Disability Commissioner Act 1994, is "*to gather such information as in the Commissioner's opinion will assist the Commissioner in carrying out the Commissioner's functions under this Act.*"

To assist this Office in deciding what action to take on this matter, we would appreciate receiving your response to the complaint, along with a copy o[redacted], clinical notes from his consultation o[redacted]

Please ensure that D[redacted] is made aware of this complaint and provides input into your response.

Please provide this information b[redacted], **2016**. Documents may be sent to **PO Box 1791, Auckland 1140**, or scanned and emailed to hdcresponses@hdc.org.nz.

Once this information has been reviewed, and a decision made on what action to take on this complaint, we will write to you again.

Thank you for your assistance.

The anatomy of an HDC complaint

- Complaints can be very stressful and an HDC inquiry can be daunting for the clinician's involved.
- MPS/MAS run a counselling service for their members which is confidential and can be easily accessed through our 0800 number.
- Encourage clinicians to seek support from colleagues and family.
- Consider how you approach the clinician when a complaint is received.

The anatomy of an HDC complaint

- Take note of the due date. Get an extension if needed.
- It is more important to have the right response, more than an early response.

The next letter

- HDC now investigating.
- Doctor or practice could be found in breach of Patient Code of Rights.
- Consider providing a further response/ more information.

Where next

If found in breach

- May be required to:
  - Apologise.
  - Run audits/update procedures.
  - Undergo training/education.
- May be referred to MCNZ re competency concerns.
- May be referred to Director of Proceedings
- Director of Proceedings may take case to Health Practitioner’s Disciplinary Tribunal.

Vicarious liability

Case

The story

- Mother brings her 6 week old child for immunisations. Mother is a nurse at a children's hospital. They see a GP who practices Integrative medicine. The mother is asking for the immunisations to be given. The doctor believes that the mother is insufficiently informed about the potential risks of immunisations to make an informed decision. The doctor explains the risks and would like the mother to consider this information and return another day for the immunisations.
- The mother is unhappy about this. Another GP in the practice steps in and offers to vaccinate the child. The mother initially agrees but ends up leaving before the immunisations are given.
- The mother complains to the HDC.

Case

HDC

- The Deputy Commissioner is critical of the GP's practice and is considering a referral to the Medical Council of New Zealand over the GP's professional conduct.

- The Deputy Commissioner considers that childhood immunisations are routine and so 'declining it in a manner that appeared unbalanced is problematic'.

Case

The practice is asked to provide information:

- Clinical records.
- Communication between the Medical Centre and mother.
- Medical Centre’s Standard Operating Procedure/ Polices/ Guidelines pertaining to six week vaccinations.
- The GP’s statement.
- The practice’s statement.

Protecting the practice

- Policies:
  - Robust, up to date.
  - Are all relevant staff aware of the policy.
  - Induction process documented?
  - Audits to ensure compliance needed?
- Complaints process:
  - Robust.
  - The Code.
- Competency of your staff:
  - How is this assessed?

HDC: vicarious liability

- S 72 Health & Disability Commissioner Act 1994:

"anything done or omitted by a person as the employee of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person, whether or not it was done or omitted with that employing authority's knowledge or approval."

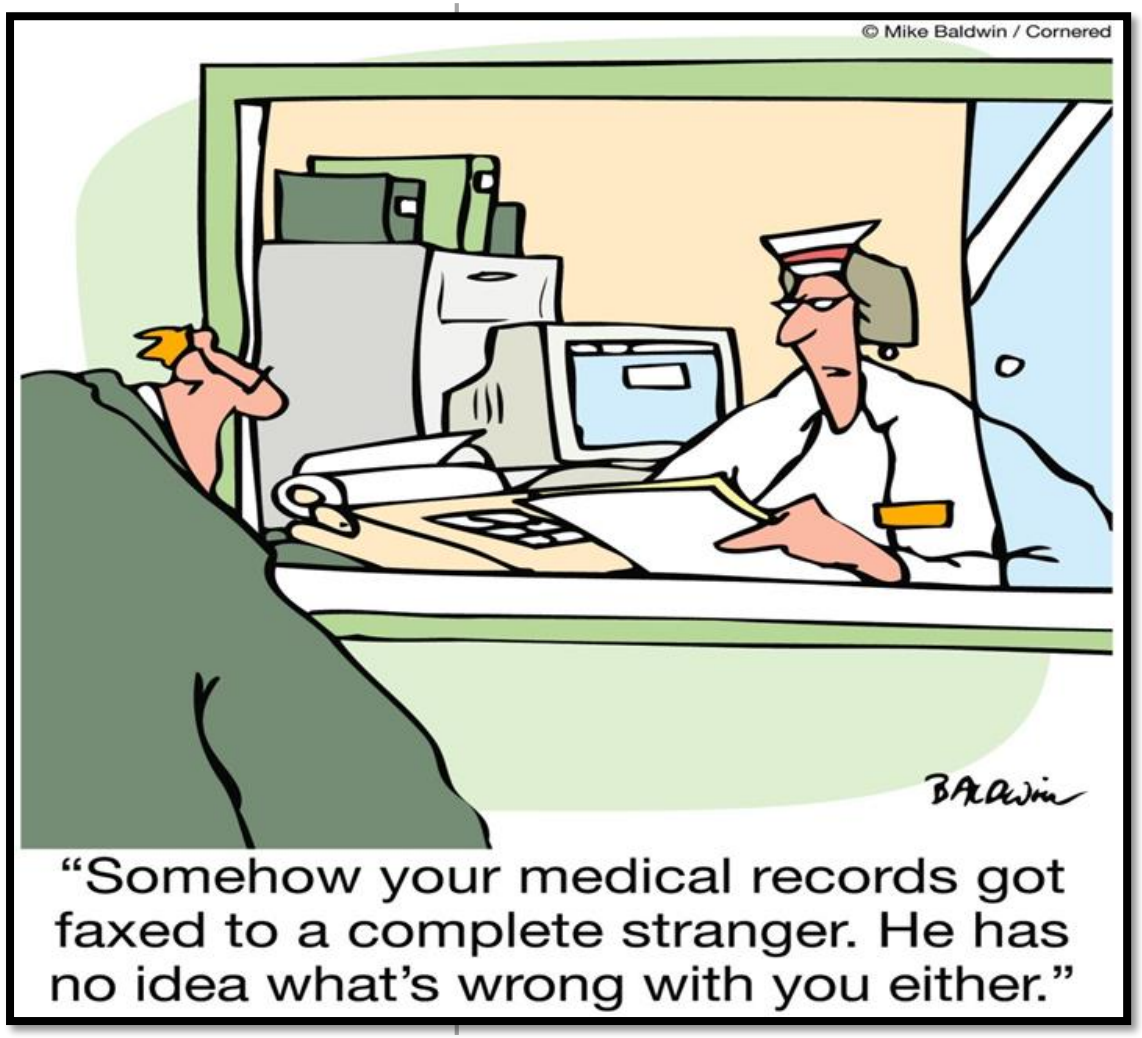
- Subject to:

"it shall be a defence for that employing authority to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing or omitting to do that thing, or from doing or omitting to do as an employee of the employing authority things of that description."

HDC: vicarious liability, the changing landscape

- If an employee has been found to have breached the Code of Patient Rights, the employer has invariably also been found in breach, regardless of adequate induction and polices in place.
- MPS are pursuing a High Court ruling to overturn a ruling in a case.
- Watch this space….

Privacy


© Mike Baldwin / Cornered
"Somehow your medical records got faxed to a complete stranger. He has no idea what's wrong with you either."

Releasing notes

- Parents requesting children’s notes.
- Relatives requesting notes after a patient has died.
- Patient’s requesting their own notes.
- Police requesting notes.

Releasing notes quiz

1. Mother has custody of 5yr old girl. Father who has access one weekend a month requests copy of her notes – no reason given. Doctor has no other background information.

Releasing notes quiz

Answer

- Ask why he wants the notes (he doesn’t have to tell you).
- What specifically is in the notes (narrow it down if possible).
- Is there anything contentious in the notes?
- What is in the child’s best interest?
- Must release to a parent (regardless of custody) unless you have a good reason to withhold.

Releasing notes quiz

2. Parent requests notes of 13 year old daughter who was brought into practice by school nurse 2 weeks ago.

- Does the child get a say?

- Do the rights of the child outweigh the parents right to the notes?

Releasing notes quiz

Answer

- Ask the patient.
- Assess Gillick competence.
- What is in the child’s best interest?
- The decision is best made by the clinician (rather than the practice manager) because they know more about the circumstances.
- The competent child’s consent or refusal outweighs the parent’s right.

Releasing notes quiz

3. Wife requests notes of husband who died of natural causes 2 months ago.

Releasing notes quiz

Answer

- Ask who the executor of the will is.
- Ask why she wants the notes (she doesn't have to tell you).
- Specify what information (narrow it down).
- Read through and redact information as needed: third party information, information you know the patient would not want released.

Releasing notes quiz

4. Wife requests notes of husband who died of natural causes to check if any inheritable disease which may affect child. Husband had no will.

Releasing notes quiz

Answer

- What information and why?
- Is the wife NOK?
- Limited release.
- Who is going to complain?

Releasing notes quiz

5. Mother requests notes of adult son who committed suicide 5 years ago. Son had no will.

Releasing notes quiz

Answer

- Who is NOK?
- What is in the notes.
- Consider the family dynamic: would the son have wanted his mother to have his health information?

Releasing notes quiz

6. Daughter, who holds EPA, requests notes of mother who is in dementia unit.

Releasing notes quiz

Answer

- The EPA is enacted.
- The daughter’s consent is as though the patient consents.
- Again consider what needs to be redacted.
- Must release unless there is good reason to withhold.

Releasing notes quiz

7. Daughter, who is nominated as EPA, requests notes of mother who is living independently at home.

Releasing notes quiz

Answer

- Is the EPA enacted?
- If not seek consent of the mother.

Releasing notes quiz

8. Acrimonious divorce. Mother has full custody of their 11 year old son. The son has disclosed to the GP that the father has threatened him whilst on a day's outing. The son felt very unsafe. The father requests the child's notes. He asks that this be kept confidential.

Releasing notes quiz

Answer

- Non-custodial parents retain their right to their child's HI. However this his has limits.
- The mother cannot veto this. The views of the mother to be taken into account, however the father has asked for this to be kept confidential.
- Is the child Gillick competent?
- What is in the child's best interest? This is paramount.

Releasing notes quiz

9. Police request notes of anyone who has presented with burns in last 48 hours (investigating a murder).

Releasing notes quiz

Answer

- Under legislation we have a discretion to co-operate with the police.
- Safest to get consent from the patient if possible.
- This request is very broad, ask the police to narrow the request to a specific person.
- How urgent is the request. If not urgent ask for a Production Order
- What is in the patient's best interest? Consider the seriousness of the crime being investigated, what would the patient want.

Releasing notes quiz

10. Police request notes of a patient who is missing, there are concerns for their safety.

Releasing notes quiz

Answer

- Assess urgency, is there time for a production order?
- Are you more likely to get a complaint about releasing or not releasing?
- Consider if the patient would want this information released.
- What is in the patient’s best interests.
- Discretionary.

Releasing notes quiz

11. CYFs request parents' and child's notes under section 66 1 (a) and (b) of the Children, Young Persons and Their Families Act, 1989.

Releasing notes quiz

Answer

- Child’s notes can be released if in their best interests, this is discretionary.
- Parents health information: best to obtain consent. Consider trust in the therapeutic relationship. If the notes are supportive of the parent they will likely give consent.

Releasing notes

- Parents requesting children's notes – the child's best interests are paramount, can be complex, ask if not sure.
- Relatives requesting notes after a patient has died – ask who is executor/administrator of estate. Beware of warring siblings.
- Patient's requesting their own notes – must be released unless you have a good reason to withhold. What can reasonably be redacted?
- Police requesting notes – consent/Production Order/discretion.

Patient Portal –
the Good , the Bad and the Ugly

The Good:

- Patient ease of access.
- Reduce work load in notifying results.
- Allows patients to correct their health information.

The Bad:

- Patients may question what is written in notes.
- Patients may be concerned re abnormal bloods which are not significant.
- Providers may feel limited in what they write in the notes.

The Ugly:

- Patients aware of diagnosis before told in person.
- Generate complaint after seeing adverse comment in notes.
- Other health providers unaware that patient will see their letters.

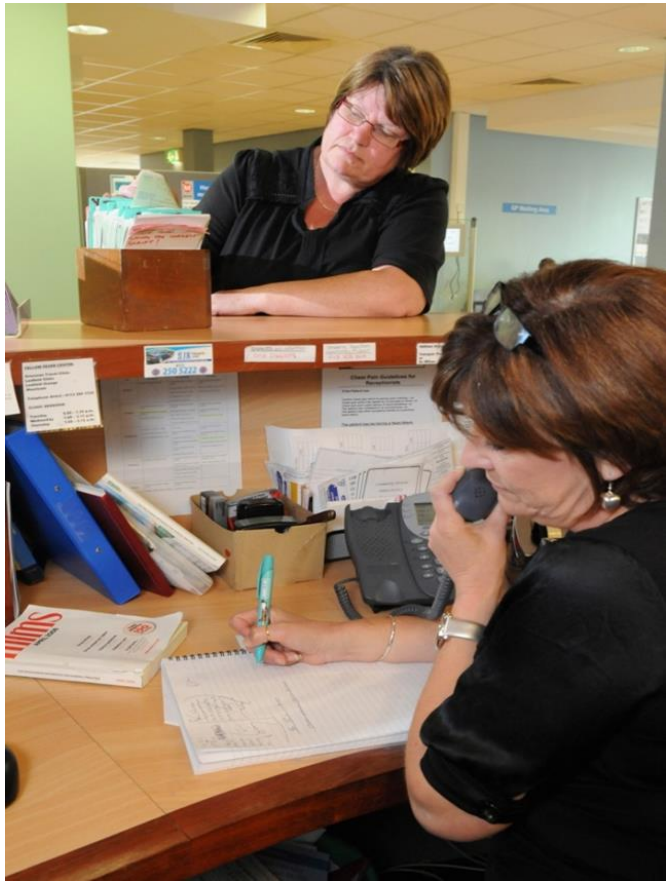
Privacy around the practice

- Faxes.
- Photocopier.
- Telephone.
- Texts.
- Visitors.
- Staff ID.
- Smart phones.

- Computer:
  - Back up tapes.
  - Privacy.
  - Security.
  - Passwords.
- Emails.
- Internet.

Privacy around the practice: key issues

- Waiting rooms and reception areas.
- Consulting rooms:
  - Patient identifiable information.
  - Computers.
- Staff confidentiality statements:
  - Post-employment.
  - Use of social networking sites.
- Staff training.

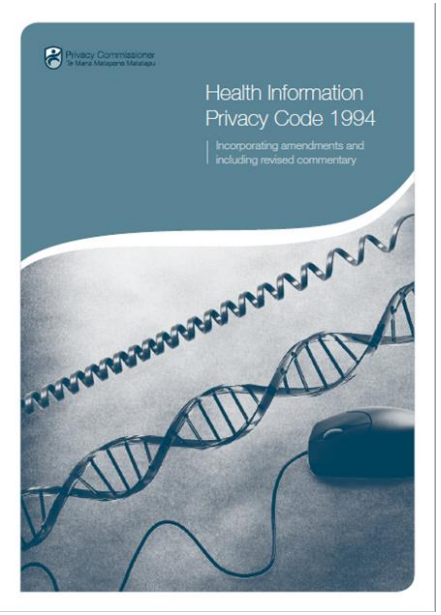


The messages

- Privacy issues are complex.
- Even with best intentions, it is easy to slip up.
- If in doubt about either keeping or releasing information contact your indemnifier.

Resources

- privacy.org.nz for further information on the Health Information Privacy Code and online tutorials regarding privacy.
- Webinar on Privacy in Prism at medicalprotection.org/nz.



Enduring Power of Attorney

Enduring Power of Attorney (EPA)

Protection of Personal and Property Rights Act 1988 - Setting up an EPA:

- This is set up by the patient through their lawyer.
- The patient must be competent to set this up. Once they lack competence it cannot be set up and there is a court process to appoint a welfare guardian under the Act.
- The competence required is specific to making this one decision.
- For property, multiple people can be named and can be enacted whilst the patient is competent.
- For personal care and welfare, only one person can be named. Can only be enacted once deemed incompetent by a medical practitioner.

Enduring Power of Attorney (EPA)

Powers of the EPA:

- Lawfully consent to treatment.
- The EPA must act in the patient's best interest, so cannot refuse life-saving treatment.
- If patient did not make this decision when competent, the EPA cannot consent to DNR order. It is the clinician's decision if the patient is not competent.
- Prior to being enacted, can make small decisions for the patient.

Enduring Power of Attorney (EPA)

Powers of the EPA:

- Request health information as though they are the patient. There are limits however to this:
    - Patients best interests.
    - The patient would not want this information to be released, or has previously refused release of certain information to the person holding EPA. Third party information must be redacted.
- Can be revoked by the court.
- Cease at the time the patient dies.

Bullying and Harassment

Bullying and harassment

- Happens.
- Not acceptable.
- Threshold.

Defining bullying

Workplace bullying is **repeated** and **unreasonable** behaviour directed towards a worker or group of workers that creates a risk to health and safety.

Duncan Cotterill

Bullying

Examples:

- Belittling remarks, undermining integrity, opinions marginalised.
- Ignoring, excluding, silent treatment, isolating.
- Intimidation, condescending manner.
- Persistent and/or public criticism.
- Unreasonable or inappropriate monitoring of work.
- Making hints or threats about job security.
- Giving unachievable or meaningless tasks.

What bullying is NOT:

- Friendly banter, light-hearted exchanges, mutually acceptable jokes and compliments.
- Issuing reasonable instructions and expecting them to be carried out.
- Warning or disciplining someone in line with organisational policy and procedures.
- Insisting on high standards of performance in terms of quality, safety and team cooperation.

What bullying is NOT:

- Legitimate criticisms about work performance (not expressed in a hostile, harassing manner).
- Giving critical feedback, including in a performance appraisal, and requiring justified performance improvement.
- Assertively expressing opinions that are different from others.
- Free and frank discussion about issues or concerns in the workplace, without personal insults.

Defining harassment

Any type of **unreasonable, unwelcome** comment or behaviour which **offends, humiliates or intimidates** the person it is directed at. It may be **repeated** or be a **one-off incident** which is significant enough to have a detrimental effect on the person's health and safety, employment, job performance or satisfaction. Harassment may also occur **in person** or through **email** and **social media** both inside and outside of the workplace or work time.

Auckland DHB

Bullying and harassment

- Speak up if you can.
- Remove yourself physically.
- Document the incident(s):
    - Objective description.
    - Who was present.
    - Impact on you.
- DHB policy
- Speak to union
- Call indemnifier
- Contact person within DHB/superviser

Medical Protection

MORE THAN DEFENCE

Medical Protection is the world's leading protection organisation for doctors and healthcare professionals

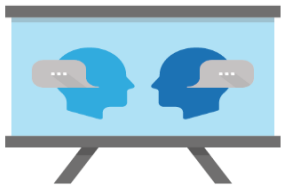
As a not-for-profit, mutual organisation, we protect and support the professional interests of more than 300,000 members around the world

Membership provides access to expert advice and support together with the right to request indemnity for complaints or claims arising from professional practice

Our philosophy is to support safe practice in medicine by helping to avert problems in the first place

Medical Protection

MORE SUPPORT FROM MPS



Helping you to avoid problems before they happen is central to our approach so we provide a wide range of risk management resources and workshops

Take advantage of our **PRISM** online learning, free of charge as a benefit of your membership

Our events and conferences offer support and practical advice on topical issues relevant to health professionals

Medical Protection

Further support and information is offered on our website, in addition to our publications, booklets, factsheets and case studies.

medicalprotection.org