

SELECT COMMITTEE ON OFF-PROTOCOL PRESCRIBING OF CHEMOTHERAPY IN NSW

Inquiry into off-protocol prescribing of chemotherapy in New South Wales

HEARING: SYDNEY, MONDAY 31 OCTOBER 2016

NSW Health – Professor David Currow, Karen Crawshaw, Susan Pearce

SUPPLEMENTARY QUESTIONS

Questions for Ms Karen Crawshaw, Deputy Secretary, Governance, Workforce and Corporate, NSW Ministry of Health

- 1. Do private health facilities have to inform the Ministry of Health if doctors are found to be operating in a way which may compromise the best health outcomes of patients in their care?**

ANSWER:

Private Health Facilities are required under the Private Health Facility legislation to have an incident management system in place that includes identification and reporting of “adverse events” to the NSW Ministry of Health. An adverse event is “an unintended injury to a patient, or a complication caused by the health care management of a patient, that results in disability, death of the patient or a prolonged hospital stay by the patient”.

There are also obligations imposed on Private Health Facilities under the Health Practitioner National Law to report notifiable conduct of employees and/or contractors who are registered health professionals to the registration authorities.

- 2. In your evidence you told the committee that the incident monitoring requirements for St Vincent’s are “pretty much the same” as for a publically run facility. Are there any differences in the requirements and if so what are they?**

ANSWER:

There are no differences in the incident management and monitoring requirements applying to St Vincent’s Hospital. The relevant requirements are set out in the NSW Health Policy Directive on Incident Management, which applies to St Vincent’s Hospital as a facility within the NSW public hospital system. Specific implementation actions may vary to accommodate local differences, including different size, service mix, geographic spread and management structures of different facilities.

- 3. Given your evidence that the basis upon which St Vincent’s are funded and their clear conditions of funding “are that they comply with our policies”, given that St Vincent’s has clearly not complied with NSW Health policies and given that this was known before the 2016-17 Service Agreement was finalised on 1 September 2016, has there been any impact upon St Vincent’s on going funding from NSW Health?**

ANSWER:

A range of actions have been taken in response to section 122 Inquiry’s findings in respect of St Vincent’s Hospital. These actions are outlined in the NSW Health submission and include escalation of the performance level of St Vincent’s Health Network under the NSW Health Performance Agreement Framework on 14 April 2016 in response to the Section 122 Inquiry Interim Report. This performance level indicates that the Network was Under-Performing. As part of the Performance Framework, any service categorised as Level two requires that service to undertake an in-depth assessment of the relevant problem, identify options to address it, provide a detailed recovery plan and meet the Ministry of Health monthly to discuss progress. In this instance, the Inquiry Interim and Final Reports and their

SELECT COMMITTEE ON OFF-PROTOCOL PRESCRIBING OF CHEMOTHERAPY IN NSW

Inquiry into off-protocol prescribing of chemotherapy in New South Wales

recommendations have served as the recovery plan. Updates on actions taken by St Vincent's Hospital to address Inquiry recommendations are provided at monthly meetings with the Ministry.

- 4. In your evidence to the committee in response to a statement from the Chair that from what he hears a culture of marginalisation for people who speak up is "rampant" in NSW Health, you answered "Yes, absolutely there is going to be an advice and a support line around that as well." Could you please clarify whether you were giving evidence that you agree that a culture of marginalisation for people who speak up is rampant in NSW Health and/or among health care professionals who report incidents?**

ANSWER:

The statement "yes absolutely" by Ms Crawshaw was in response to a comment by the Chair that the work underway within NSW Health encouraging people to come forward to raise concerns is a positive step.

- 5. When do expect [sic] the program you referred to in your evidence of staff being able to look online and see what has happened with an incident in the information management system will be rolled out:**
(a) At Murrumbidgee Local Health District
(b) Across the rest of the NSW health system?

ANSWER:

The NSW Health Incident Information Management System was launched in 2005 as an effective way to improve care. A next generation system called ims+ is now being developed. Murrumbidgee Local Health District will be part of the first group of hospitals online by mid-2017 with all others by the end of 2017. It will be easier to use, provide quality data and reporting and enable feedback to the notifiers of incidents. It will also improve the ability to effectively record, track, manage and report on clinical, Work Health & Safety and corporate incidents as well as consumer feedback, including actions taken to address issues and mitigate existing risks.

- 6. Is the model consent form mandatory for all doctors?**
(a) If not why not?

ANSWER:

The current NSW Health Policy Directive, Consent to Medical Treatment, incorporates a model consent form to apply to all interventions. The document is mandatory for public hospitals, including St Vincent's Hospital. It does not apply to doctors working in private practice or within a private health facility. The policy and the consent form reflect the legal requirements for consent. These legal requirements for obtaining patient consent apply to all doctors, and ensuring compliance with those legal requirements is a key professional obligation for medical practitioners.

- 7. When will the manual to accompany the NSW Health model consent form which you referred to in your evidence be finalised and available for doctors and other health practitioners?**

ANSWER:

A final draft of the new Consent Manual will be issued for consultation before the end of the year. The final version is expected to be issued in the first quarter of 2017.

8. How often are audits conducted by NSW Health regarding doctors' compliance with obtaining informed consent from patients?

(a) Are doctors given notice of these audits before they occur or are there surprise audits conducted?

(b) How many audits have been conducted in the past 5 years? How many of these were done with notice and how many without?

(c) What is the level of compliance with doctors in the NSW Health system obtaining informed consent from patients in each of the past 5 years?

ANSWER:

Public hospitals in NSW participate in the national accreditation scheme that assesses facilities against the ten National Safety and Quality Health Service (NSQHS) Standards. Accreditation involves regular three to five yearly accreditation visits by external accrediting bodies. As part of the reviews, assessors require organisations to give clear evidence of compliance with the Standards. The NSQHS Standards include Standard 1.18, which deals with "partnerships with patients in decisions about their care", including informed consent to treatment.

Consent may also be considered as part of a local health district audit or review of an issue or process where specific concerns have been raised.

9. Would mandatory reporting by medical practitioners of unsatisfactory professional conduct reduce the risk of an incident like the flat dosing by Dr Grygiel not being picked up for 10 years?

ANSWER:

The purpose of mandatory reporting is to encourage registered practitioners to identify and report matters of concern. In the case of Dr Grygiel, concerns about his practice were raised by registered health professional staff. The key failing identified was not in practitioners identifying and reporting issues of concern, rather, that these concerns were not addressed within the organisation in a timely manner. The Section 122 Inquiry Report included a recommendation that St Vincent's Hospital revisit its mechanisms for escalation of clinical concerns.

10. Is NSW health considering making mandatory reporting by medical practitioners of unsatisfactory professional conduct a requirement as part of the Service Agreement with St Vincent's?

ANSWER:

No. Mandatory reporting requirements are personal obligations imposed on all registered health practitioners (i.e., including, but not limited to, doctors). As such they are contained in the Health Practitioner National Law, which requires reporting of "notifiable conduct". This ensures a direct legal obligation is imposed on registered practitioners, rather than seeking to rely on a service agreement between a state agency and the body that employs or contracts the registered health practitioner.

The Health Practitioner National Law also imposes direct obligations on public and private health facilities to report notifiable conduct by employees. Notifiable conduct covers practicing while intoxicated, sexual misconduct in connection with practice, and placing the public at risk of substantial harm due to the practitioner's impairment or a significant departure from the accepted professional standards.

Questions for Ms Susan Pearce, Deputy Secretary, System Purchasing and Performance, NSW Ministry of Health

1. In your evidence you said that the “St Vincent’s network was escalated to a level two on the performance level framework”
- Could you please outline for the committee the performance level framework, who it applies to, an explanation of the 4 different levels and the criteria for deciding which level a health organisation is on?
 - Could you please outline in detail what being on level two means for St Vincent’s?
 - Could you also outline who decided to escalate St Vincent’s to level two, when this occurred and why level two was chosen for St Vincent’s?
 - What are the criteria for St Vincent’s to be removed from level two and when do you expect this to occur?

ANSWER:

The attached NSW Health Performance Framework (Attachment A) identifies performance assessment criteria and performance triggers (Section 3.4), processes for escalation and de-escalation and an explanation of performance levels (Section 3.5).

The Section 122 Inquiry Interim Report was released on 2 April 2016 and following assessment by the NSW Ministry of Health, St Vincent’s Health Network was escalated to a Level Two under the Performance Framework on 14 April 2016.

This performance level indicates that the Network is Under-Performing. As part of the Performance Framework, any service categorised as Level Two requires that service to undertake an in-depth assessment of the relevant problem, identify options to address it, provide a detailed recovery plan and meet the Ministry of Health monthly to discuss progress. In this instance, the Inquiry Interim and Final Reports and their recommendations have served as the recovery plan. Updates on actions taken by St Vincent’s Hospital to address Inquiry recommendations are provided at monthly meetings with the Ministry.

It has been agreed with the Chief Executive of St Vincent’s Health Network that there will be an external review in April 2017 of the Network’s progress and resolution of Inquiry Report recommendations. This review will assist the Ministry in assessing any change in performance level.

2. **What avenues are there for NSW Health staff and patients to make anonymous disclosures relating to concerns about the activities of Senior Clinicians and/or management?**

ANSWER:

Health care practitioners have a legal, ethical and professional responsibility to raise any concern they have about the practice of another professional. Health care managers equally have a responsibility to act on any concerns raised in a timely and effective way.

There are mechanisms in place to ensure staff can raise concerns without fear of victimisation or adverse consequences. The NSW Health Code of Conduct PD2015_49 requires that staff must

- “report immediately any episode or incident of clinical care which raises concerns about standards of clinical care or about possible clinical malpractice” (section 4.3.20).

SELECT COMMITTEE ON OFF-PROTOCOL PRESCRIBING OF CHEMOTHERAPY IN NSW

Inquiry into off-protocol prescribing of chemotherapy in New South Wales

- “at all times act in a way which is consistent with NSW Health’s duties of care to its patients and clients, and its obligations to provide a safe and supportive environment on its premises for patients and their family members” (section 4.3.1).

In accordance with current policies including those relating to management of a concern or complaint about a clinician, complainants have an important right to confidentiality. Information about a complaint is only to be provided on a ‘need to know’ basis, and should not be provided to third parties with no legitimate involvement in the process. If an anonymous disclosure relating to concerns about the activities of senior clinicians or management is received, the response and action taken will depend on the level of detail provided, the clarity of the information and the ability to obtain further detail, including whether the concerns can be independently verified (for example, through patient records or other staff).

If the concerns are not able to be independently verified or there is no ability to obtain further information or clarification, anonymity may prevent an adequate investigation and proper response.

Staff are currently able to anonymously lodge incidents, including concerns relating to care, on the NSW Health electronic incident information management system. The next generation ims+ will have this capability as well as extra features added going forward, including the ability for patients to log their concerns directly into the system via a web page.

- 3. Can you provide the committee with a copy of the letters sent from the ministry to the chief executives of the local health districts at both the interim report and the final report?**
- a) Were these letters also sent to the chief executives of all statutory health corporations and affiliated health organisations? If not, why not?**

ANSWER:

Following receipt of the Section 122 Interim and Final reports, letters issued from the NSW Ministry of Health to relevant NSW Health organisations [sample Attachment B].

St Vincent’s Health Network received correspondence regarding their recommendations as this affiliated health organisation is a separate entity which does not come under a Local Health District. All other Affiliated Health Organisations (AHO) stipulated under Schedule 3 of the Health Service Act 1997 come under the auspices of the relevant Local Health District or Network.

The Sydney Children’s Hospitals Network, which is listed as a Statutory Health Corporation under Schedule 2 of the Health Services Act 1997, received a letter requesting compliance with the recommendations on the release of the interim and final reports. Justice Health and Forensic Mental Health Network, also a Statutory Health Corporation, were included in the first correspondence on the interim report for information, but were not included in further correspondence. This is because they are not directly involved in delivery of cancer services.

The other Statutory Health Corporations as listed in Schedule 2 of the Act, The Agency for Clinical Innovation, Bureau of Health Information, Clinical Excellence Commission and the Health Education and Training Institute were also not sent correspondence relating to the release of the reports and progression of the recommendations as they are also not directly responsible for any of the recommendations or service delivery in general.