Submission
No 166

THE MANAGEMENT AND OPERATIONS OF THE NSW AMBULANCE SERVICE

Name: Suppressed

Date received: 2/07/2008

The Director
General Purpose Standing Committee No. 2
Parliament House
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CONFIDENTIAL

2 July 2008

RE: The management and operations of the NSW Ambulance Service (Inquiry)

Dear Madam,

My motivation to submit to the enquiry is due to nothing other than a genuine wish to see the service be the excellent provider of pre-hospital care that many believe it can be. My submission to the enquiry is related to some legal, ethical and educational issues that I have identified through my experience and research which has resulted in the development of some recommendations for change.

Neal vs Ambulance Service of NSW and The State of NSW

In December 2006, Michael Neal sustained a head injury and was attended to by paramedics. These paramedics did not transport Mr Neal to hospital but instead left him in the care of the police. As a result of not receiving the appropriate medical treatment early enough, Mr Neal suffered a greater injury than would otherwise have been the case. Mr Neal successfully sued the Ambulance Service.

The issue raised in this case relates to the training of Ambulance staff in matters other than clinical care.

The Service itself trains a large number of staff. These staff are being trained by unqualified people who do not have the necessary knowledge or qualifications to ensure that officers are clear about their legal and ethical responsibilities in the care of their patients. As such, they are open to misinterpreting the law, misunderstanding its application and are at risk of developing 'moral blindness' as a result of working in a culture that does not value ethical decision making in patient care.

Ambulance Service of NSW vs Worley

In another recent litigation, the ASNSW has had to defend itself and its practices against negligence charges by a man who suffered a brain injury as a result of being given too much adrenaline too quickly. However the Court of Appeal did not find the ASNSW to have been negligent. In its decision the court determined that the trial judge had erred in hearing evidence at the first trial because it had heard from doctors rather than paramedics regarding the treatment of Mr Worley. As such, the trial judge had misapplied the provisions of the *Civil Liability Act*. In addition, there had been some dispute as to whether the ASNSW's medical advisory committee had applied updated information as to 'best practice' standards for anaphylaxis. There was some discussion over whether or not officers were compelled to follow protocols that may have been out dated with respect to best practice guidelines or how officers are to interpret protocols that may be unclear[1]. What has become evident from the case of *Worley* and others is, irrespective of whether or not an officer is following protocols which are designed to keep the patient and practitioner safe, without the ability to critical think, analyse and act *independently* on the data that officers are given in the form of patient signs and symptoms and circumstances surrounding the call for help, an ambulance officer will not always be able to effectively treat their patient and this has implications for both the patient and the Ambulance Service.

In the case of *Worley*, the ASNSW was able to show that they were keeping abreast of the current literature and thus they were able to avoid a charge of negligence. Nevertheless, the case raised some interesting issues regarding the training and professional status of ambulance officers. One comment from the Court of Appeal with respect to their view of ambulance officers was that,

> "Ambulance officers are not medical practitioners, let alone specialists in emergency medicine. Their training is by no means insignificant, but it does not equip them with the theoretical knowledge which would permit a fine evaluation of alternative treatments...their

[1] *Inquest into the death of Charles Keith Chenery*, East Maitland Coroner's Court, 14/7/06 Abernathy, J in which the coroner determined that the ASNSW was required to develop clearer guidelines and protocols with respect to a "standing off" policy when attending violent or potentially violent locations.

two functions were to stabilse the condition of a patient, so far as their skills and resources permitted, and to ensure his speedy transfer to an available hospital. There was no complaint in relation to their performance of the transfer function." (*Ambulance Service of NSW v Worley* 40113/05, 2006 NSWCA 102 at 29.)

The significance of this kind of statement is that the Court in *Worley* found that ambulance officers were able to competently transfer their patient to hospital but are not considered 'specialists' in emergency medicine – despite the fact that the ambulance service's primary role is arguably to provide emergency health care to the community. The decision in *Neal* found that officers were not able to determine that a patient *should* have been transported to hospital nor did they actually transport him to hospital (or anywhere else). Both cases highlight the very real danger of harm to the patient if the officers are not given adequate training and support to perform their duties.

(See Eburn, M (2007) *Ambulance Service of NSW v Worley*; further legal lessons for the emergency services. *JEPHC* Volume 5 : Issue 2 at http://www.jephc.com/full_article.cfm?content_id=424 for further discussion of this case).

Ambulance Service Act

In NSW there currently is no legislation written that applies only to the Ambulance Service. Ambulance services are referred to under Chapter 5A of the *Health Services Act* 1997. Western Australia and the Northern Territory are the only two other states that do not have specific Ambulance Service legislation. Other health professionals have lengthy statutes that govern their practice and allow for enforceable standards to be applied. For example, the *Nurses and Midwives Act* is a document of some 81 sections that clearly outlines the objects of the Act as,

> *"(a) protecting the health and safety of the public by providing mechanisms to ensure that nurses and midwives are fit to practise, and*
>
> *(b)to provide mechanisms to enable the public and employers to readily identify nurses and midwives who are registered or enrolled under this Act.*
>
> *(2) The Board must exercise its functions under this Act in a manner that is consistent with these objects."*

A similar piece of legislation exists for medical officers but there is no such legislation written that applies to ambulance officers. There are several implications of this not least being the fact that there is no formal registration body to oversee the education and application of care by ambulance officers to members of the public. The Health Care Complaints Commission is able to investigate ambulance officers who are complained about by the public but they are unable to refer the matter to a professional committee or Tribunal for consideration and action as they are to do with doctors and nurses. The Ambulance Service instead has a Professional Standards Unit which has no legislative status and is not required to apply the rule of law to its proceedings particularly in respect to issues of procedural fairness and natural justice.

I note that in the Annual Report 2006/07 the number of cases received and finalised by the Professional Standards and Conduct Unit is listed but unfortunately I am unable to ascertain if this number is greater or less than in previous years as I am unable to find further information regarding

this. In addition, I note that some 23 cases have gone to the Coroner with one case in particular, that of Jehan Nassif leading to the Premier giving an unreserved apology to the patient's family in Parliament. The family's lawyer claimed that original ambulance records had been destroyed and the Coroner found that if the patient had been transported to hospital earlier, she may have survived. This case mimics that of *Neal* in that the patient was not transported to hospital after a decision was made by the officers on the scene without perhaps adequate training and support to do so. I also note that although the unit received a total of only 46 complaints and 16 of these were dealt with by the HCCC. It is difficult indeed to believe that of the 1,052,000 cases attended by Ambulance Officers, only 46 people had an issue with the service provided. One wonders what criteria is established by the Unit to determine the definition of 'complaint' and how this differs from 'grievance' (of which there were an additional 21 cases). One would assume that this material should be readily available to the public but I have been unable to find or access it.

Under 67C of the *Act* there is provision made for the establishment of an Ambulance Services Advisory Council. I have been unable to ascertain what recommendations the Advisory Council has made to the Service and whether or not those recommendations have been acted on.

Legal and Ethical Education and an Expanded Scope of Practice

Section 67B (i) of the *Health Services Act* 1997 ('the Act') clearly states that the Director-General has responsibility to,

> *...make available to the public reports, information and advice concerning the operation of ambulance services.*

One would assume that it would fair and reasonable to expect that a code of conduct outlining the standard of care that should be expected of an ASNSW employee be readily accessible by the public without the requirement of a request to the CEO of the organisation. This is what is available to the public at the Ambulance website,

> "*Code of Conduct and Ethics*
> *Ambulance has a commitment to provide ethical practices for the community. The Code of Conduct describes the values and ethical framework that guides the actions, decisions and behaviours of the organisation. All staff members are required to behave in a manner consistent with the stated values and standards and report any suspected corrupt conduct or any departure from the Code by themselves or others."*

Unfortuantely, no one is able to access the code to determine whether or not staff are behaving "in a manner consistent with the stated values and standards..."

The ASNSW appears to lack transparency on a number of levels. This has been identified by a number of other submissions with respect to recruitment and promotion within the service. It is also apparent from outside the service that there is a clear lack of transparency and accountability to the public. For example, the ASNSW did allow the public to access its newsletter, SIRENS, via its website up until approximately 12 months ago when it became restricted to employees only. Whilst I think it is admirable that the Service has provided an e-newsletter to replace SIRENS, I do not understand why SIRENS could not also remain available to the public thus fostering a culture of transparency and accountability.

In addition, the health care system requires the development of Paramedics to take a greater and more autonomous role in order to relieve the burden of other health care providers. In order to expand their scope of practice, paramedics should be supported by clear legislation that allows for clarity of scope of practice, clearly outlined responsibilities and accountabilities. The same was once said about nurses. Suzie Laufer in a preface to CCH Health states:-

> *The law plays an ever increasing role in virtually every aspect of clinical practice...A clear understanding of the law...enables competent decision making at all levels of practice.*[2]

This principle was exemplified in the case of *Neal*. If the ambulance officers attending Mr Neal had realised that a man with a head injury is unable to give or refuse consent for treatment because he is not competent to do so, then the outcome for the patient (and the officers) may have been different.

With respect to increasing nursing practice autonomy Wallace stated that the development of clear parameters of nursing practice as opposed to medical practice, was needed.[3] The same could be true of paramedic practitioners.

Fees

As far as I am able to determine from the ASNSW website, I am likely to be charged a fee for the ambulance attending a call to me for help. This fee is determined by the number of kilometres travelled by the ambulance in order to respond to me but it does not state at what rate per kilometre I will be charged. I believe that this may be a breach of the *Fair Trading Act* (s47)

would recommend that it be investigated further. I would however argue that having an emergency service act on a fee-for-service basis is morally wrong in a society that has always believed in a 'needs-based' approach to health care irrespective of the consumer's ability to pay but it is even more abhorrent to think that this fee may be applied without the knowledge or consent of the consumer who is effectively entering into a contract on the basis that a fee will be exchanged for the service. I do not know that this is, in itself, legal. I do not think that a consumer can legally enter into a contract when they do not have the capacity to do so. Many emergency patients do not have this capacity. The Ambulance officer is able to provide care for the patient without the patient's consent thanks to the applicability of the Doctrine of Necessity. I am concerned that some officers may decline to treat or transport a patient based on the officer's assessment of the patient's ability to pay. However, I do not know that this extends the contract to include a payment for services

[2] Laufer, S (1990) CCH Health et al as cited by Johnstone, MJ (1994) *Nursing and the injustices of the law* at 21 W. B Saunders, Sydney.

[3] Wallace, M (1995) Legal quandaries in decision making: some considerations for nurses. *Impossible demands: Ethical and legal quandaries for nurses conference proceedings.* Monash University Centre for Human Bioethics.

when this is not known or consented to by the patient. This issue can develop into a complex ethical and legal issue that would be difficult for officers to resolve without adequate training and support.

Irrespective of its legality or morality, it is yet another area where the Ambulance Service has failed to make itself clear and transparent to the public that it is designed to serve.

Conclusion and Recommendations

The lack of adequate training in the area of law and ethics leads to a culture that develops moral blindness and corruption which is allegedly rife within management in the service. I propose that the committee give consideration to reviewing the status of the ambulance service as an integrated arm of health but rather, recommend that separate legislation be drafted that mirrors that of medical officers and nurses that:-

(a) allows for the registration of officers;

(b) outlines the educational requirements and standards for registration;

(c) incorporate a clear disciplinary process and a well defined scope of paramedic practise;

(d) a fee schedule; and

(e) a clear mandate to protect the interests of the public as its primary role.

I would be happy to provide further information or clarification of the issues discussed above (or any others) if I am able and it would assist the enquiry.

Yours sincerely