AUCKLAND WOMEN'S HEALTH COUNCIL

NEWSLETTER

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PO Box 99-614, Newmarket, Auckland. Ph (09) 520-5175
Email: awhc@womenshealthcouncil.org.nz
Website: www.womenshealthcouncil.org.nz

HDC: Watchdog or Guard Dog?

By Stuart McLennan

As New Zealand's 'Health Watchdog', the Health and Disability Commissioner (HDC) acts as an independent health ombudsman, serving as the initial recipient of complaints about health and disability services providers.

In a legal system where injured or otherwise aggrieved patients are effectively prevented from suing in court for malpractice due to the ACC legislation, the ability to complain to the Commissioner has taken on primary importance.

After ten years in the role, in which HDC became widely respected not only within the health and disability sector but by the wider public, Ron Paterson stepped down as Commissioner on 31 March 2010.

Anthony Hill, a lawyer who had spent the previous 15 years working at the Ministry of Health in various roles, including the last six years as a Deputy Director-General of Health, was appointed as the new Commissioner following a selection process and began his term in July 2010.

Selecting a new Commissioner

As an "independent Crown entity", it is ultimately the Governor-General who appoints the Commissioner, but the Minister of Health who recommends an individual for appointment.

There is no requirement for the position to be advertised or formal interviews to be held. However, both in 1994, when Jenny Shipley recommended Robyn Stent, and in 2000, when Annette King recommended Ron Paterson, the position was advertised and a final list of interviewees approved by the Minister.

In January 2000, Annette King chaired the interview panel herself, along with Associate Minister Tariana Turia, the Director-General of Health and a retired Court of Appeal judge. It is notable that no provider or consumer representative sat on the interview panel.

In stark contrast the interview panel that was convened in the selection of the current Commissioner comprised of the Director-General of Health, and three others nominated by Minister of Health Tony Ryall.

Pat Seymour, a lay member of the Nursing Council who has previously been involved as a member of hospital and health boards and sits on the National party's Board of Directors.

Pamela Jefferies, the former Chief Commissioner of the Human Rights Commission and a former member of Wairarapa District Health Board.

Professor Des Gorman, a doctor and Head of the University of Auckland's School of Medicine and Chair of Health Workforce New Zealand. He was also, at the time, a member of the Medical Protection Society (MPS) New Zealand Advisory Panel, a position that was declared.

An Appropriate Composition?

As with any quasi-judicial office, impartiality and independence is

essential for HDC. The Commissioner must be seen to be independent of the interests of provider and consumer groups. The process for appointing the Commissioner should, therefore, be uncontaminated by even a perception of bias. Something that Minister King clearly understood in 2000.

Questions must, therefore, be raised regarding the composition of the selection panel for the new HDC. It clearly had a perception of bias with the inclusion of health provider representatives.

Of particular concern is Professor Gorman's involvement given his position on the MPS New Zealand Panel at the time. Indeed, it appears that Professor Gorman's involvement on the selection panel for HDC coincided with him chairing one meeting of the MPS New Zealand Panel while Professor Alan Merry was on sabbatical.

The primary aim of MPS is to protect and safeguard the professional reputations of individual members and the professions to which they belong, by assisting doctors with specific legal problems that arise from their clinical practice and lobbying for doctors' interests in the regulatory environment. In the New Zealand context, this includes advising doctors who have a complaint to the HDC against them.

While MPS is a UK based mutual society, with its head office and Council, which provides ultimate governance, based in the UK, the New Zealand Panel advises MPS on matters relating to its business in New Zealand.

As Professor Merry stated in a piece for *MPS Casebook* in 2009: "Given our unique medico-legal environment, this local input is very important, and the Panel's advice is given great weight."

Consequently, it is very difficult to see how any member of the MPS New Zealand Panel can properly sit as a member of a selection panel advising the Minister of Health on the suitability for appointment of an individual as HDC.

There was a clear conflict of interests and one must question Minister Ryall's judgement in nominating Professor Gorman to the selection Panel despite the conflict of interests that he knew existed. His involvement compromised the independence of HDC.

This was further exacerbated by comments from MPS reported in New Zealand Doctor on 8 September 2010: "The Medical Protection Society is looking forward to a better relationship with the health and disability commissioner following the appointment of Anthony Hill to the role."

A Suitable Appointment?

While there have been no suggestions that Anthony Hill does not meet the required statutory qualifications for HDC, disquiet has been expressed by some in the sector about the decision to appoint someone who has been a Ministry of Health official for the past 15 years, and thus may lack

independence from the interests of the bureaucracy.

Similar concerns were raised in 2000 regarding the appointment of Ron Paterson, who was a Deputy Director-General of Health in the year before his appointment.

While Anthony Hill was at the Ministry for a significantly longer period of time than Ron Paterson, it is clear that holding a position at the Ministry of Health prior to appointment, in itself, does not indicate how successful a Commissioner will be.

Commissioner Hill has been in office for too short a time to make a fair or accurate assessment of how effective he will be. One notable aspect of Commissioner Hill's tenure to date, however, has been his low media profile. Given that a great deal of the success of the Office has been related to the use of the media in the past, it will be interesting to see if this changes over the course of Commissioner Hill's term in office.

However, in light of the above, one must wonder if New Zealand's 'Health Watchdog' no longer has a bark, or worse, is now a Guard Dog for the medical profession.

Author information: Stuart McLennan worked at the Office of the Health and Disability Commission from March 2008 to December 2009. He is currently working at the University of Basel's Institute for Biomedical Ethics.
Email: s.mclennan@unibas.ch

NOW YOU SEE THEM – NOW YOU DON'T

The AWHC recently received a copy of a government Cabinet paper on the changes that will be made to a number of agencies in the public service sector.

Gone by lunch time
The **Charities Commission** is to be "disestablished" – their activities will be carried out by the Department of Internal Affairs.

The **Mental Health Commission** was "due to cease on 31 August" and its advocacy and monitoring functions will be transferred to the office of the Health and Disability Commissioner.

The **Alcohol Advisory Council of NZ** (ALAC) and the **Health Sponsorship Council** (HSC) will both be "disestablished" and their functions will be transferred to "an arm's-length health promotion entity that will combine the relevant functions from ALAC, HSC and the Ministry of Health.

The **Crown Health Financing Agency** (CHFA) will also be disestablished and its lending function will be taken over the NZ Debt Management Office in the Treasury and its assets will be transferred to the Ministry of Health.

It's going to save the country millions of dollars. Yeah right!

THE NATIONAL CHILD PROTECTION ALERT SYSTEM WITHIN HEALTH

The issue of implementing a nation-wide child protection alert system across DHBs has been in the media a great deal lately. An article in the *Sunday Star Times* on 12 December last year was the first that many of us working in women's health had heard of what was going on. (1)

The *SST* article stated that "alerts are being placed on the health files of pregnant women whose unborn children are deemed at risk of abuse" and that the alert is attached to a person's National Health Index (NHI) number, "so that if they are assessed at hospitals or medical centres throughout the country, medical staff will know their history."

The NZ College of Midwives had not been involved in any discussions on the proposed system and voiced their concerns over the fact that "the discussion had been largely hospital-focused with little input from mothers and parents, or midwives."

Subsequent enquiries have revealed that a Position Paper had been produced by the Paediatric Society of NZ and finalised in February 2011. The paper, entitled "Child Protection Alert System within Health," was developed by Dr Patrick Kelly, a paediatrician at Auckland DHB and chair of the Child Protection Special Interest Group of the Paediatric Society of NZ, Miranda Ritchie, the National Violence Intervention Programme Manager for DHBs, Dr Russell Wills, paediatrician and Clinical Director Maternal, Child and Youth at Hawke's Bay DHB, and Dr Zoe McLaren, paediatrician and member of the Child Protection Team at ADHB's Starship Children's Health.

Apparently seven DHBs have been operating Child Protection Alerts within their own patient management systems for 10 years. However, only two of these DHBs, Auckland and Hawke's Bay have progressed to placing alerts externally on the national Medical Warnings System database. So it comes as no surprise that the position paper was produced by staff from these two DHBs

The paper states that "the Privacy and Children's Commissioners, the Ministry of Health, the Ministry of Social Development and the NZ Police all support the system in principle." (2)

Medical Warnings System

The Medical Warnings System (MWS) is associated with the National Health Index database which contains the unique health identifiers/NHI numbers for nearly all New Zealanders.

Under the national child protection alert system (NCPAS) when a "vulnerable" child or pregnant woman is identified, a flag on their NHI points to the child protection alert placed in the MWS. So irrespective of which hospital that person may subsequently present for treatment, clinicians will see the child protection alert on the MWS and contact the relevant DHB for the information specific to the child protection issues.

The paper identifies some key issues for the child abuse alert system. They

include the stigma attached to having a CPA on the NHI/MWS, privacy concerns, and what are referred to as "procedural issues." These include listing the siblings of an abused child on the alert, the security of the information, the removal of alerts, and evaluating the effectiveness of the alert system.

Under privacy issues the paper states that although the parents' right, as the child's representative, to know is guaranteed in the Privacy Act 1994, this right is not absolute. It is therefore "reasonable not to inform parents that an alert has been placed if there is concern that parents may not re-present for medical care of their sick or injured children." (2)

The Ministry of Health has produced a Child Protection Alert Management Policy which outlines proposed minimum criteria and processes. The Policy notes that alerts placed on a pregnant woman's NHI number will usually be removed after the baby is born, although there is provision for the alert to be transferred to the baby when its NHI number is generated if the health professionals involved consider there are ongoing risks.

CPAS until 17 years of age

Once a child has an alert placed on the NHI/MWS it remains there until the child turns 17. The information that appears in the Medical Warning System alert states: "Child protection concerns, contact XDHB" and provides the contact number of the DHB named.

Dr Russell Wills, one of the authors of the Paediatric Society's position paper said currently alerts were placed on the NHI of children who had been treated for inflicted injuries, so if they turned up at another hospital, the previous incident would come up. Alerts were put on the system only where a referral had been made to Child, Youth and Family – it is standard practice to inform the family that this has been done – and where there was considered a likelihood of further abuse. A "multi-disciplinary team" of doctors, nurses and social workers (which must include at least one member with training in child protection, made the decision on whether to lodge an alert. (1)

Only senior staff on the multi-disciplinary team had the authority to place, review and remove an alert.

But will it work?

All of this raises many questions about how such a system, developed without consultation with key stakeholders, will work in practice. Objections have already been raised by the former Health & Disability Commissioner Robyn Stent, whose stepdaughter was wrongly suspected of abuse at Starship hospital's child protection unit. Ms Stent was reported as saying that she does not trust medical professionals to make the right calls around the alerts. (1)

Midwives in Auckland have also raised serious concerns about the impact that the reporting systems are already having on the women they provide maternity care for. Requesting midwives to fill in forms that contain additional information about both the women they are caring for and their families, and then expecting them to forward this information to the DHB is

likely to result in a loss of trust between the pregnant woman and her midwife. Some women are already opting to give birth alone and without assistance rather than risk their midwife reporting the birth of their baby to Child Youth and Family or other agencies.

Increasing the likelihood of a woman receiving little or no antenatal care and/or going into hiding to give birth to her baby is not a sensible way of dealing with the issue of child abuse.

Given that the system that has been gradually put in place over the past decade and now covers half the children in New Zealand has not been evaluated to see if it has made any difference to the incidence of child abuse, it simply does not make sense to go ahead with a rollout of a new CPAS without reviewing the old one.

The whole focus of the documents produced by the authorities so far is on the placing of alerts rather than what systems must be put in place to provide the services that a family labelled as "vulnerable" needs. It is also an ambulance at the bottom of the cliff approach rather than one that involves investing in the resources that will help ensure babies are nurtured and cared for within their families.

References

1. Tony Wall. *Sunday Star Times*. 12 December 2010.
2. Patrick Kelly et al. *Child Protection Alert System Within Health.* February 2011.

e-documents

It's an issue for many consumer and community groups who don't have the resources to print off large documents that were once printed and posted to us. Consultation documents, reports, papers for meetings attended as a consumer representative are now all sent via email.

While most government departments and DHBs will send you a hard copy of the document if you ask, it isn't always easy to find who you need to send such a request to.

Saving trees is important, but most of us do not have the capacity to sit in front of a computer and read a 200-page report or a 60-page consultation document on-line.

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UP AND COMING EVENTS

DISTRICT HEALTH BOARD meetings for September 2011:

Waitemata DHB (Website address: www.waitematadhb.govt.nz)
The **combined Waitemata DHB and Auckland DHB** Community & Public Health Advisory Committee meeting starts at 2pm on Wednesday 14 September 2011.

Waitemata Hospital Advisory Committee meeting starts at 10am on Wednesday 28 September 2011 and will be followed by the DHB Full Board meeting which starts at 1pm. Both meetings will be held in the DHB Boardroom, Level 1, 15 Shea Terrace, Takapuna.

Auckland DHB (Website address: www.adhb.govt.nz)
The Hospital Advisory Committee meeting will be held at 10.45am on Wednesday 7 September 2011 followed by the Full Board meeting at 2pm.

The **combined Auckland DHB and Waitemata DHB** Community & Public Health Advisory Committee meeting starts at 2pm on Wednesday 14 September 2011.

Counties Manukau DHB (Website address: www.cmdhb.org.nz)
The Counties Manukau DHB Full Board meeting will be held at 1pm on Wednesday 7 September 2011 at 19 Lambie Drive, Manukau City.

The Hospital Advisory Committee meeting will be held at 11am on Tuesday 27 September 2011 and will be followed by the Community & Public Health Advisory Committee meeting at 1pm at 19 Lambie Drive.

WOMEN'S HEALTH ACTION'S WOMEN'S SUFFRAGE BREAKFAST

will be held at 7- 9am on Friday 16th September 2011 at the Ellerslie Racecourse.

Frances Walsh, author of "*Inside Stories: A History of the New Zealand Housewife 1890 – 1975,*" will speak on "Women's Magazines: Empowering or Enslaving?"

- For further information or to book a table, contact WHA at info@womens-health.org.nz or phone (09)520-5295.