

# Care Homes Briefing

Number 46

## Health and safety prosecutions

The Health and Safety legislation requires employers to take steps to ensure that their employees and others are not harmed at or by their work. This applies equally in the healthcare sector to staff and patients.

This legislation has not previously been greatly used to prosecute healthcare providers when patient safety issues arise, however, there has been an increasing trend towards this illustrated by the following cases:

- Southampton University Hospitals NHS Trust was prosecuted and fined £100,000 for the failure of two SHOs to administer antibiotics to treat a patient's obvious signs of infection following a routine knee operation. Their failure led to the patient's death. The two SHOs were both convicted of gross negligence manslaughter and received 18 month prison sentences (suspended).
- A Manchester NHS Trust was prosecuted following the fall of a patient from a hospital balcony. The protective railing was insufficient and the Trust had taken no action to put matters right prior to the incident. The Trust was fined £18,000.
- A care provider in Scotland was fined £10,000 when a patient committed suicide by hanging herself from a window fixing. Constant observation had been brought to an end the day before her death.
- BUPA was fined £90,000 following an injury to a 95 year old patient who slipped from a hoist when being lifted from a bath. She suffered a fractured

shoulder and died a few days later. The care assistant looking after the resident had only been employed by BUPA for six weeks and had not received training or used this hoist before. Risk assessments and procedures for manual handling and bathing had not been brought to the attention of care assistants and the supervision of them was inadequate.

Prosecutions are usually based on s.3 of the Health and Safety at Work Act 1974 which requires employers to work in a way that non-employees are not exposed to risk. Obviously this presents particular challenges for the provision of healthcare which has inherent risks. All risk can never be obliterated and although all healthcare providers take steps to minimise risk, at what point does the taking of appropriate steps end and the liability for injury begin? This is often unclear particularly in the interface between civil liability and criminal prosecution.

Healthcare providers will be aware of their legal duties under the Health and Safety legislation, both to their staff and residents. However, it is important to ensure that operational procedures, policies and training are kept under review to ensure that these are up to date. They are part of the list of key actions that providers can take to fulfil their duties under the legislation or to minimise the risk of prosecution including:

1. appropriate policies and procedures;
2. robust risk assessment;
3. proper staff training and supervision;

4. proper equipment and maintenance records;
5. untoward incident reviews and the implementation of appropriate subsequent changes.

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November 2006

## **Health and Safety Training: Minimising the risk of prosecution**

The Health and Safety legislation is increasingly being used to prosecute healthcare providers. It is crucial that senior management are aware of the implications of this and the steps to take when incidents arise, including adopting appropriate investigation techniques to minimise the risk if prosecution follows.

Training on this topic is available from RadcliffesLeBrasseur. For more information please contact [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com)

## **Update : Mental Capacity Act & Mental Health Act revisions**

We can confirm that we are advised by the Department of Health that they are still anticipating that the Mental Capacity Act will come into force in April 2007.

Indeed, the research sections of the Mental Capacity Act have already been the subject of a statutory instrument bringing them into force in 2007. Sections 30-41 come into force on 1 April 2007 subject to the more particular specific rules regarding applications set out in the statutory instrument (SI 2006/2814).

As far as the revisions to the Mental Health Act are concerned, the Department apparently intends to bring these forward when parliamentary time allows.

For more information on Care Home Law contact Andrew Parsons or Stephen Janisch at RadcliffesLeBrasseur on 020 7222 7040, or email: [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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