

**Failure of hospitals to ensure that
employee was competent to practise surgery
(04HDC07920, 21 February 2005)**

Public hospital ~ Private hospitals ~ General surgeon ~ Colorectal surgery ~ Intra-abdominal surgery ~ Laparoscopic surgery ~ Competence ~ Privacy issues ~ Inter-agency communication ~ Right 4(1)

The Commissioner undertook an own-initiative investigation into whether a general surgeon's employers took adequate steps to respond to concerns about the surgeon's practice and ensure that he was competent to practise surgery, following a number of complaints from individual patients. The inquiry was initiated to recognise the important obligation of a surgeon's employing authority to maintain and monitor the competence of the surgeons it employs, to protect patients.

It was held that the public hospital did not take adequate steps to respond to concerns about the surgeon's practice and to ensure that he was competent to practise surgery. A hospital employing surgeons has an obligation to maintain and monitor their competence, to protect patients. It failed to meet that obligation and breached Right 4(1).

It was held that the first private hospital had a duty to patients to ensure that its visiting practitioners were competent, and a responsibility to respond to concerns about a practitioner's competence in a decisive, timely and appropriate manner. The hospital took steps to restrict the surgeon's practice, but there was sufficient information to justify it taking earlier action. By failing to do so, it did not take adequate steps to protect patient safety and breached Right 4(1).

It was held that a second private hospital responded in an appropriate and timely manner to concerns about the surgeon's competence following the death of one of his patients, and did not breach Right 4(1) of the Code. The hospital acted responsibly to ensure the matter was dealt with promptly and effectively, and any risk to patients was minimised.

The report highlights the need for hospitals to have adequate systems in place to monitor the competence of the health practitioners operating on their premises. Hospitals need to have effective processes to enable them to respond decisively to any concerns about a clinician's practice, in a co-operative and co-ordinated manner. Patient safety must be the paramount consideration.