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LawTalk Blog



Mental health and duty of care from health professionals

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A New South Wales case, [*Simon v Hunter and New England Local Health District \[2013\] NSW 476*](#), involved a man by the name of Stephen being concerned about the mental state of his friend, William. He arranged for him to be taken by ambulance to hospital. There he was detained under the *Mental Health Act 1990* in New South Wales.

Subsequently a psychiatrist working at the hospital discharged him into the care of Stephen, in order for him to be taken by car to Victoria where his mother lived. At a stop along the way, Stephen was strangled and killed by William.

There was clear evidence that William was very ill at the time of the incident. The deceased's mother and sister sued the hospital for damages for psychiatric injury resulting from nervous shock upon learning of the incident.

At first the Court held that negligence had not been proven, however the matter went on appeal. It was held that the hospital did owe a "common law duty of care" to prevent causing harm in releasing William into Stephen's care and had control over the risk of discharging William. They had direct dealings with William immediately prior to his discharge and knew or ought to have known of the mental state he was in.

It was foreseeable and not an insignificant risk of serious harm being caused to Stephen. A reasonable person in the hospital's position would have continued to detain him and not released him into the care of his friend. The injuries that the deceased therefore suffered were related to the hospital's negligence and the mother being a close relative and suffering from a nervous shock injury therefore had a right to bring a claim for compensation.

This case demonstrates that a duty of care can be owed by health authorities to close relatives for nervous shock and as a result of a breach of the duty of care a claim may be brought.

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