

SPSO decision report

Case: 201705029, Western Isles NHS Board
Sector: health
Subject: communication / staff attitude / dignity / confidentiality
Decision: upheld, recommendations

Summary

A firm of solicitors (Firm C), raised a complaint on behalf of their client (Mrs A) that, during an examination under anaesthetic, a consultant had carried out a rectal examination without her knowledge or consent. She only found out about this when she received a copy of her medical records. When Firm C raised concerns about this with the board, they passed the correspondence to the consultant (who no longer worked for the board), who responded to Mrs A directly. The board subsequently accepted the consultant's response as their response to the complaint and did not investigate the complaint through their complaints handling procedure.

We took independent advice from a consultant in obstetrics and gynaecology (the medical specialty that deals with pregnancy, childbirth, and the post-partum period and the health of the female reproductive systems and the breasts). We found that it was not routine practice to perform a rectal examination as part of the examination Mrs A was having conducted. The Royal College of Obstetricians and Gynaecologists guidance on Obtaining Valid Consent states that procedures should not fall out-with that which the patient consented to, unless there is an unanticipated emergency. We found that Mrs A should have been aware that a rectal examination was a possibility prior to the procedure and consented as such. In the absence of consent, it was not reasonable for a rectal examination to be carried out. We upheld the complaint.

We also had concerns about the way in which Firm C's concerns had been handled. Firm C had clearly raised a complaint and our view was that the board should have investigated and responded to this in line with their complaints handling procedure. We made recommendations regarding this.

Recommendations

What we asked the organisation to do in this case:

- Apologise to Mrs A for conducting a rectal examination on her without her knowledge or consent and for failing to consider her complaint through the complaints handling procedure. The apology should meet the standards set out in the SPSO guidelines on apology available at <https://www.spsa.org.uk/leaflets-and-guidance>.

What we said should change to put things right in future:

- Ensure that clinical staff in the Obstetrics and Gynaecology department are aware of the Royal College of Obstetricians and Gynaecologists guidance on Obtaining Valid Consent.
- Consideration should be given to a discussion about consent at the departmental induction for doctors and/or a training session.

In relation to complaints handling, we recommended:

- Complaints handling staff should be aware of the board's complaints handling procedure and how to

recognise a complaint.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.