Answer to Questions from Senate Inquiry into Australia Post's Treatment of Injured and Ill Workers

submitted by

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March 2, 2010

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Honourable Senators and Members of the Senate Standing Committee
on Environment, Communications and the Arts
Australian Senate Inquiry into Australia Post's Treatment of Injured and Ill Workers
PO Box 6100 Parliament House
Canberra ACT 2600
Australia

Dear Senator Mary Jo Fisher:

Responses to the Senate Inquiry's Conference Call Questions to Dr. Doupe
Regarding:
Australian Senate's Inquiry into
Australia Post's Treatment of Injured and Ill Workers

Enclosed are the answers to the questions asked of me during the Senate Inquiry into the Australia Post and Return to Work on Thursday February 11, 2010.

QUESTION 1: The Australia Post injury management early intervention program states that an Australia Post supervisor may accompany an employee to a doctor's surgery to support the employee and inform the doctor of Australia Post's commitment to assisting employees to remain at work or return to work swiftly.

Do you believe that a supervisor attending such medical employments with an employee is appropriate and necessary?

DR. LISA M. DOUPE'S RESPONSE**:**

No: Rarely it would be acceptable in an emergency, where the person is unconscious or very seriously ill, unable to speak for themselves, and a secondary source of information may be required.

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General Comment**:** As occupational health physicians, we are physicians first, and our duty of care must be not only within the law but also according to our medical association ethics and our governing colleges' standards of care and practice. In general physicians are to be independent, professional and should not allow the payer to influence decisions regarding the patient.

To elaborate: as a physician, I look for guidance for my behavior from my professional governing bodies, and the law. I look to science, and corporate policies and contracts as tools that may need to be incorporated into my decision-making processes.

*My overarching recommendation with regard to your questions is that you read Australia's Good Medical Practice: A Code of Conduct for Doctors in Australia. I recommend that you not only read this document but that you study it and think about key portions as they relate to actions of the parties involved in your return to work procedures and processes with regard to injured and ill patients***.**

I realize that you may think, well of course we'll do that, but my experience has been that that is not always the case with regard to inquiries of these types. And so I feel a strong need to emphasize that you study this document and related documents carefully where their particular contents relate to your task. If ethics, values and standards are not heeded and not enforced, then all boats will sink together.

Briefly I wish to focus on these guides for physician's behavior. Professional codes of ethics and professional governing bodies' codes of conduct, (practice and duty of care guides), provincial and federal law, science and workplace policies.

1. **PROFESSIONAL ETHICS CODES:**

Australian Medical Association Code of Ethical Behavior
http://www.ama.com.au/codeofethics

QUOTE:

Australian Medical Association Code of Ethics - 2004. Editorially Revised 2006 November 2006

Members are advised of the importance of seeking the advice of colleagues should they face difficult ethical situations.

Preamble

The Australian Medical Association Code of Ethics articulates and promotes a body of ethical principles to guide doctors' conduct in their relationships with patients, colleagues and society.

This Code has grown out of other similar ethical codes stretching back into history including the Hippocratic Oath.

Because of their special knowledge and expertise, doctors have a responsibility to improve and maintain the health of their patients who, either in a vulnerable state of illness or for the maintenance of their health, entrust themselves to medical care.

The doctor-patient relationship is itself a partnership based on mutual respect and collaboration. Within the partnership, both the doctor and the patient have rights as well as responsibilities.

Changes in society, science and the law constantly raise new ethical issues and may challenge existing ethical perspectives.

The AMA accepts the responsibility for setting the standards of ethical behavior expected of doctors.

1. The Doctor and the Patient

1.1 Patient Care

a. Consider first the well-being of your patient.
b. Treat your patient with compassion and respect.
c. Approach health care as a collaboration between doctor and patient.
d. Practise the science and art of medicine to the best of your ability.
e. Refrain from denying treatment to your patient because of a judgment based on discrimination.
f. -----

k. ***Respect your patient's right to choose their doctor freely, to accept or reject advice and to make their own decisions about treatment or procedures.***

l. Maintain your patient's confidentiality. Exceptions to this must be taken very seriously. They may include where there is a serious risk to the patient or another person, where required by law, where part of approved research, or where there are overwhelming societal interests. UNQUOTE.

If you wish a source of comparison, please also read: **Canadian Medical Association Statement of Ethics** See attached references and please refer to: *#1. Consider the patient first. # 24. Respect the right of a competent patient to accept or reject any medical care recommended.* I also refer you to statements 1, 2, 3 and 24 in the CMA Statement of Ethics.

2. GOVERNING BODIES PROFESSIONAL PRACTICE GUIDES:

Regarding Code of Conduct / Duty of Care –

Australian Medical Council http://goodmedicalpractice.org.au/wp-content/downloads/Final%20Code.pdf

There many points in this Code on which I recommend you focus but please do focus on these in particular:

1.4 Paragraph 3

2.1.1

2.2.7

2.4.2

3.2.1 through 3.2.3

3.4

3.5.2

3.7

3.10

3.11.2

5.3

8.1

8.7

8.11 Both paragraphs but particularly the second paragraph.

These words in your Code should be considered in *every* case that comes before your Inquiry and *every* case regarding an injured or will worker.

For purposes of comparison:

The College of Physician and Surgeons of Ontario (CPSO):

QUOTE: ***Principles for Duty of Care in the Doctor and the Patient Relationship***

The practice of medicine is founded on the values of compassion, service, altruism and trustworthiness. These values form the basis of professionalism.

Professionalism is essential to ensuring public trust. Professionalism should underlie all interactions between physicians and the public. Professionalism entails ensuring that health care is fairly distributed to those most in need.

The CPSO issues the standards of care and it addresses the confidentiality that must exist between patient and physician. **UNQUOTE:**

As I noted above, the other issues that influence my behavior as a physician are the law, science, and corporate policies and workplace contracts.

3. THE PROVINCIAL LAW IN ONTARIO:

The Workplace Safety and Insurance Act Section 33 (1) Ontario Canada states *" A worker who sustains and injury is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury and is entitled to make the initial choice of health professional for the purposes of this section."*

4. THE FEDERAL LAW IN CANADA:

In Canada the Charter of Rights and Freedoms and Human Rights Code supersede the Workplace Safety and Insurance Board (WSIB) ACT and physicians must consider this fact and how these may documents influence their decisions.

5. SCIENCE

Physicians have a duty to stay up to date with science in their field. Successful treatment of their patients depends on this. Successful outcomes have *many* variables. But a critical variable in a successful outcome is the therapeutic alliance between the

physician and the patient. The patient needs to trust the physician. Otherwise there will be no therapeutic alliance and thus reduced chance for successful health outcomes.

Cautionary Note: Return to work is a very specific decision making process. It is specific to the injured or ill individual at any point in time and can be made ONLY if one knows the organization's leadership, culture and environment and the specific demands of the jobs as well as physical and mental needs of the individual. (i.e. not just a paper review). Evidence based guidelines (regarding the science) are *tools* because they reference populations not individuals and therefore serve as tools for a physician. Tools are not a foundation for decision-making. They are only an assist. Ethics and practice guides are the foundation of a physician's decision making. Tools do not integrate the physical, mental and social determinants of health into the decision-making. The physician must do that.

6. WORKPLACE POLICES AND CONTRACTS:

During all the years I worked as an occupational health physician, I had to look to the organization's policy. Occupational health physicians must work within the organization's values and the organization's business plan. If the workplace is unionized, the workplace parties' contractual agreements must be respected and complied with, provided they do not conflict with the physician's code of ethics and conduct. If they do conflict, the physician faces a conflict of interest. It is then up to the physician to decide whether they will act in an ethical manner or not.

In the end, governing councils and the law both must hold physicians accountable for their decisions and behaviors.

QUESTION 1 Summary:

The answer is no, in view of the AMA's Code of ethics. In view of the potential gap between codes of ethics and duty of care guides, you may wish to review Australia Post's values and practices for return to work with the Australian Medical Association Code of Ethics framework or with Good Medical Practice: A Code of Conduct for Doctors in Australia.

QUESTION 2: Should workers return to work in positions that are lower or with less responsibility or fewer skills than their usual work?

DR. LISA M. DOUPE'S RESPONSE:

It would be easy to say the obvious - of course not. But nothing is that easy or clear when it comes to supporting an individual's needs. The determining factor will be the attitudes of the company leadership and the professionals regarding the reason that a

lower skills job is being chosen. I would not support returning a worker to a lower skills job if the only intent were to bring the person to work to cut claims and lower costs, and not support the best possible functioning and well being of the person. The focus must be on the individual patient.

With every patient, I like to remind myself what the objective of the return to work process is.

The objective of a return to work plan is part of a more fundamental process of returning the person to *function* as well as of supporting the workplace and society. I see return to function, return to work – *if practiced appropriately*, as a win, win, win, win. Far too often the focus of return to work is cost cutting only, rather than addressing what the best outcome for ***all*** concerned would be -- the working person, the company, the community and the nation. Innovative means to keep health care costs down are required, but should not come at the expense of the working individual's physical and mental health.

The key for the professional in a company's rehabilitation program is to ask one's self these questions: *What does the person need and what does the process need in order to be successful in the return to function, return to work process?*

Sometimes a person will not return to work at the workplace. Then the question changes and becomes what does the person need to create a successful return to *function*, return to independence and to best possible participation in our society, so that the person and society both benefit.

In both cases, the professionals need to ask themselves 3 questions in the following order:

1) How do we build for successful rehabilitation and plan a comprehensive long lasting return to function, return to work?

2) What are the barriers and what are the facilitators for the return to work?

3) Why did the injury or illness happen and what do we need to do to prevent injury to someone else (the person who replaces the absent worker) and to prevent a reoccurrence to the same worker if he/she returns to the same job?

QUESTION 2 Summary

I would want to see that a job as you described be part of an overall comprehensive rehabilitation plan with time limits and increasing responsibilities /demands leading to the individual's former job and then to be reassessed by myself if progress is not being made. If this is not the process, I could/would not agree to a placement on a lesser job.

The current business model for return to work is creating similar cases with the same types of complaints in Canada. Initially the focus of the agreement between workers and employers was recovery or a return to function. The agreement has now been changed for return to function to mean return to work.

I believe the issues related to ethics and practice standards are critical to the complaints raised by workers your Inquiry faces with regard to return to work. If ethics and practice standards are not upheld, and if people are not held accountable, everyone at every level suffers. Australia has an opportunity to provide a model for the world in this regard.

Thank you for your patience and thank you for listening. Australia has an opportunity to stand out in this test of patient care.

Sincerely,

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References:

The Canadian Medical Association

http://policybase.cma.ca/PolicyPDF/PD04-06.pdf

Ethical Behavior and Practice Guides:

1) Canada: Ethical Behavior Required of a Physician:

b. And for Occupational and Environmental Medical Association of Canada.

http://www.oemac.org/?page=72

2) Canada: Duty of Care: College of Physicians and Surgeons of Ontario.

(Principles of Practice and Duties of Physicians)

http://www.cpso.on.ca/policies/guide/default.aspx?id=1702

(The Practice Guide)

http://www.cpso.on.ca/policies/guide/default.aspx?id=1696

3) Australia: Australian Medical Association Code of Ethics

http://www.ama.com.au/codeofethics

4) Australian Medical Council – Good Medical Practice: A Code of Conduct for Doctors in Australia

http://www.health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/39/02.pdf&siteID=1&str_title=Good%20medical%20practice%20guidelines%20policy.pdf