



Healthcare Innovations
How practice has
changed

HERSTON HEALTH PRECINCT SYMPOSIUM 2021

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RBWH MEDICAL SERVICES & METRO NORTH LEGAL

THE INTERSECTION BETWEEN GOOD MEDICAL PRACTICE AND OUR HUMAN RIGHTS OBLIGATIONS

PURPOSE

To build an awareness of the potential intersection between “good medical practice” and human rights obligations under the new *Human Rights Act 2019* (Qld) (Human Rights Act).



METHODS

A recent review of the *Human Rights Act* was undertaken against the current legislative basis that underpins the concept of “good medical practice”. The legal meaning of the term “good medical practice” can be found in the *Guardianship and Administration Act 2000* (Qld) (Guardianship and Administration Act) and the same meaning exists in the *Criminal Code Act 1899* (Qld). However, the *Guardianship and Administration Act* was designed to protect the rights of persons who have lost capacity, not for those who are advocating on behalf of themselves.

Under the *Guardianship and Administration Act*, consent is still required for the withdrawal or withholding of life sustaining measures, even when this is consistent with good medical practice except in an emergency and where there is no objection known. Accordingly, a person's substitute decision-maker can insist that a life-sustaining treatment be given to a person without capacity even though the treating health professional may regard the treatment to be inconsistent with “good medical practice”.

Under s37 of the *Human Rights Act*, every person has the right to access health services without discrimination, and a person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person. Under this new law, human rights complaints are now emerging where a person requests access to a health service which is not consistent with good medical practice and/or available locally.

RESULTS

The scope of the right in Queensland is not yet clear because there is limited legal precedent available. However, we can draw some guidance from international jurisprudence, including when it is reasonable and justifiable to limit this human right. Internationally, the human right to health care may be limited by the availability of public health facilities and services, acceptability (including equitable access, affordability and medical appropriateness) and quality.



CONCLUSION

The *Human Rights Act* requires health practitioners and public sector health services to be able to demonstrate how their actions and decisions are compatible with human rights, and how any limits placed on human rights are reasonable and justifiable under the provisions of this Act, even when these actions and decisions may be consistent with “good medical practice”.

