

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Corrections Association of New Zealand Inc (Applicant)

AND The Attorney-General in respect of the Department of Corrections
(Respondent)

REPRESENTATIVES Barbara Buckett and Anne O'Brien for Applicant
Roanna Chan for Respondent

MEMBER OF AUTHORITY P R Stapp

INVESTIGATION MEETING Wellington, 16 and 17 May 2006

SUBMISSIONS 18 July and 17 August 2006 (Applicant), and 7 and 17 August 2006
(Respondent). Further information was submitted by the Applicant on
10 October 2006 and the Respondent replied on 11 October 2006

DATE OF DETERMINATION 31 October 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. Corrections Association of New Zealand Inc ("CANZ") has filed an employment relationship problem in the Authority for a determination on the lawfulness and/or reasonableness of policies promulgated by the Department of Corrections ("the Department" or "PPS"). CANZ claims the policies are unlawful and unreasonable. PPS denied the claim.

Background

2. On 14 June 2004, PPS promulgated a Public Prisons Circular (2004/19). The purpose of the circular was to alert staff to additions to the Public Prisons Manual (PPM) (B.06 Inmate Health Services). The circular purported that there had been extensive consultations with Health Services staff, Unions and PPS regions. The circular replaced an earlier "*Health Services interim procedure*" (PPS Circular 2003/06). The circular promulgated the policy in regard to corrections officers issuing prescription and non-prescription medication. This concerned the management and issuing of two types of inmate medication:

- Over-the-counter medication;
- Unit dose packaged prescription medication.

The evidence

3. There are two policies, namely for Access to Over the Counter Medication (B.06.08) and Management of Unit Dose Packaged Prescription Medication Administered by Unit Staff (B.06.09), issued through the Public Prison Circular 2004/19 on 14 June 2004. The administration of the Access to Over the Counter Medication (B.06.08) policy involves the completion of a “standing order” as a record. The administration of the Management of Unit Dose Packaged Prescription Medication Administered by Unit Staff (B.06.09) includes individual names on all packaged medication and a “log sheet” and other checks apply.
4. The evidence is that the public prisons’ health services “standing order” enables corrections officers to administer *Panadol* in the paracetamol class of drugs. There is no standing order required for the management of unit dose packaged prescription medication administered by corrections officers, but there are individual names on the unit dose packaged prescription medication and “log sheet” and the corrections officers are required to obtain inmate signatures to acknowledge receipt of their prescription medication and issuing of prescription medication. Other details are also provided on the log. CANZ claims this breaches patient confidentiality. PPS denied this.
5. The history behind the promulgation of the circulars involved various consultations occurring between PPS and CANZ. Those consultations are evidenced by letters and meetings: November 1999 to July 2004.
6. The evidence also indicates that PPS consulted with an organisation called Medsafe in regard to corrections officers issuing prescription and non-prescription medication to inmates. Medsafe is a business unit of the Health Department. Medsafe was provided with the draft policies and procedures and the amendments that were made before the issuing of the final policies and procedures in the circulars. PPS relied in good faith on Medsafe’s review of the documents including a standing order procedure.
7. Medsafe advised PPS that “*the document clearly sets out the roles and responsibilities and it appears to contain the necessary information and procedures to enable custodial staff to safely administer over-the-counter medicines to inmates*”. It further advised PPS that:

“The legislation contained in the Medicines Act 1981 regarding the administration of prescription medicines should be regarded as a very minimum requirement. The policies and procedures as set out in the... [policies and standing orders] are more specific for the particular circumstances of the prison service. These documents are of a high standard and reflect current best practices regarding the administration of medicine.” (Letter dated 25 November 2003).

8. During the Authority’s investigation meeting, PPS claimed that CANZ had agreed with the final policies and procedures and as a consequence withdrew earlier proceedings in the Employment Relations Authority. CANZ says that it did not agree and relied upon the wording of the documentation and letters to say that progress was still required between PPS and CANZ in obtaining some finality to the matter.
9. PPS says that corrections officers are protected by its Public Prisons Service Collective Agreement 2003/2006 between CANZ and the Department of Corrections and can be assured of their indemnity by the Department’s insurers for administering over-the-counter *Panadol* and unit package non-prescription medication to inmates for indemnity.
10. The evidence during the Authority’s investigation was that this policy and procedure did not apply at Mt Eden and Auckland Prisons and prisons in the northern region. It also became apparent that corrections officers were calling in Public Prisons Health Service staff when prisoners requested *Panadol*. Also, the practice in many prisons is that where there are registered nurses and sufficient Health Services staff employed during Health Services hours, corrections officers have not been required to administer medicines. Outside the hours of the Health Services I was informed that corrections officers will contact the on-call registered nurse.
11. It was accepted by PPS that this was entirely reasonable and where genuine reasons were available for referring the request to Health Services or the on-call nurse this would be a reasonable expectation by the Department.

Submissions

12. The Applicant has challenged the Respondent’s policies: B.06.08 (Over the Counter Medication) and B.06.09 (Management of Unit-Dose Packaged Prescription Medication); as unlawful and unreasonable. The Respondent denied the claim.
13. Ms Buckett, for the Applicant says that the policies as documented are fundamentally flawed, are not robust, they are not well thought out, unclear, confusing and fraught with difficulties.

She says the burden of prison health care should not be shouldered by corrections officers in an environment that is hazardous and where they do not have requisite medical training.

14. Ms Buckett argued the Corrections Act did not include the provision of health services to prisoners, which is a specialist, non-custodial service. She submitted that corrections officers must ensure the safe custody and welfare of prisoners and that it is medical officers who are required to provide medical services. She says the role of corrections officers is to ensure access to medical services and not provide them. In summary she distinguished custodial care from non custodial services, which includes medical services.
15. Ms Buckett relied upon the Act governing the provision of health services to mean that these were intended to remain distinct from custodial services. She drew my attention to the requirement for medical officers to be appointed to be responsible for providing medical care and treatment to prisoners. She submitted that the medical officers are required to ensure that an adequate record of any care and treatment provided to a prisoner is maintained. She says this is another example of the separate nature of health services and custodial care.
16. Ms Buckett further referred me to the Corrections Regulations (for the distinction between custodial and non-custodial services, definition of “medical officer”, definition of “Nurse” and definition of “lawful order”), the State Sector Act 1988 (for the concept of “good employer”), and the Employment Relations Act (for good faith”). She referred to other documents including: the Department’s Code of Conduct, the parties’ Collective Employment Agreement and the Department’s Policies and Procedures Manual.
17. Ms Buckett submitted that the Department failed to comply with its obligation to communicate properly with corrections officers on the policies it has introduced. She says the Department failed to consult and sought compliance through disciplinary processes.
18. She says that the employment of custodial officers has been altered as they are required now to take on further responsibility outside the scope of their duties, for which they are untrained, and have no protection to deliver a specialist service.
19. Further, she says the situation puts the corrections officers in an unsafe environment and creates a high level of risk for them.
20. It is not necessary for me to summarise the Respondent’s submissions except to say that it has denied the allegations, contested the application and challenged the relevance of various matters raised by the Applicant, including complaining about the specificity of the claim.

Decision

21. It is my decision to dismiss the claim for the following reasons:
22. Jennifer Torr, Barbara Corner and Janetta Skiba from the Department gave sufficient evidence of consultation occurring with CANZ and Medsafe to satisfy the requirement that consultation had occurred and that confidentiality is not an issue.
23. Consultation did occur, I hold, but the parties are in dispute that any agreement was reached. In the absence therefore of any agreement and without any direct evidence of circumstances relating to the alleged unreasonableness of the policies, I hold that no reasons have been advanced for any compliance order.
24. Indemnities exist under the collective employment agreement and advice that the Department has received in regard to its public liability insurance.
25. The implementation of the policies has given rise to problems in practice that the parties should address. I accept that the introduction of the policies is an endeavour by PPS to develop and implement a policy and procedure to mitigate any risk and protect corrections officers and prevent the risk of error occurring.
26. Over the counter dispensing has involved *Panodol* and not any other drugs. The evidence is that corrections officers and nurses do not prescribe or dispense medication but administer the provision of it, which does not make the PPS requirements unreasonable considering the Department's consultation over its draft policies with Medsafe.
27. Blister packs are very seldom required to be handled by corrections officers because nurses are involved, (and visit units on a daily basis), and practices have been put in place to avoid any of the dangers complained about by the Applicant. Indeed the policies allow corrections officers to contact Health Services if there is any reason for concern about inmates and contact emergency services if necessary. Furthermore Mt Eden Prison has not implemented B.06.08 and B.06.09 and there is a direct Primary Health Service now provided.
28. There was no evidence that any disciplinary action had been actually taken or followed in regard to the practices at different prisons. In any event rights exist on an individual basis to protect corrections officers if they think that what they were required to do is unjustified. Any such action would need to be considered on an individual basis.

29. The evidence suggests that the policies are not clear, give rise to some confusion and do not reflect the practices required. The parties will need to reach some agreement on these inadequacies, but this does not render the policies illegal or in breach of any requirements, I hold. In the same way any issues relating to inmate confidentiality should be resolved between the parties and I hold there has been no direct evidence that suggests there has been any breach of confidentiality or corrections officers are being required to breach any confidentiality.
30. The application is dismissed.
31. Costs are reserved.

P R Stapp
Member of Employment Relations Authority