

SECURITY FOR NURSES - IS IT NECESSARY IN THE WORKPLACE?

2 JUNE 2020 | WORKERS' COMPENSATION

A nurse was successful in her claim against her employer for breaching its duty of care by failing to have in place a system whereby security officers could attend a mental health unit of a hospital to assist nurses in having safe access to patients. Despite appeal of the trial decision, the appeal was dismissed.

IN ISSUE

- Whether a hospital breached its duty of care to nurses in the mental health unit by not having in place security guards to assist nurses in the course of their work.

THE BACKGROUND

The plaintiff was employed as a mental health nurse at a hospital operated by the State of Queensland. On the date of incident, the plaintiff was working in the Acute Young Adult Mental Health Unit in which there was a secure area called the Psychiatric Intensive Care Unit (the **PICU**). The plaintiff left the nurses' station and went to enter the PICU. As the plaintiff opened the door to the PICU, a young male patient attempted to escape. In order to prevent his escape, the plaintiff had to push against the door to hold it closed and called out for assistance as she was not able to activate the duress button. As a result of the incident, the plaintiff alleges she sustained a back injury and psychiatric injury.

The plaintiff commenced proceedings against the State of Queensland.

The plaintiff argued that the State of Queensland, as her employer, should have:

1. Had in place a system whereby a security officer or assistant (or strong male nurse) was present to assist in such circumstances;
2. Properly trained the plaintiff and provided her with instructions (in the form of guidelines and protocols) as to safe entry into the PICU, use of the convex mirror (located adjacent to the nurses' station) to see any patients behind the PICU door, and to ensure that nurses worked in pairs including entering the unit in pairs;
3. Installed CCTV monitors to allow staff at the unit door to determine if entry could be made without any attempt of escape; and

4. Kept the patient involved in the incident secluded because of behaviours he had displayed prior to the incident – that is, having absconded twice from the hospital – and because of the risk screening he had undergone earlier that day.

The State of Queensland argued that the plaintiff was an experienced nurse in her field and should have known to wait for a co-worker before entering the PICU. The State of Queensland also argued it had numerous means by which the plaintiff could have checked to ensure the doorway was clear, as well as having in place the appropriate guidelines and protocols for the workplace, of which the plaintiff was aware. The State of Queensland argued that the plaintiff's own negligence contributed to her injury because she failed to:

- Check the convex mirror;
- Ask the patient to move away from the door;
- Wait for a co-worker; and
- Notify other nurses of her intention to enter the PICU.

THE DECISION AT TRIAL

Despite the plaintiff not having honestly portrayed her knowledge of the guidelines and instructions in place, the trial judge ultimately found in favour of the plaintiff on the basis that there was a reasonable and practical precaution available to the State of Queensland which, if implemented, would have prevented the incident. This precaution was, specifically, having a security officer available to assist when nurses needed safe access to the PICU, particularly where security officers were already employed and present at the hospital. The trial judge did not accept arguments that the State of Queensland should have rostered a male nurse on every shift to accompany other nurses into the PICU or installed CCTV monitors as it was not reasonable, practical or in the interest of staff or patients.

The plaintiff was awarded damages in the sum of \$326,312.75.

ON APPEAL

The State of Queensland appealed the primary judge's decision, on three bases. The first was that the plaintiff succeeded on a case she did not advance at trial and that the State of Queensland should have implemented the precaution of having a security officer available for nurses who required their assistance for safe entry. The second ground for appeal was the trial judge erred in finding that the State of Queensland had taken no precautions to meet the known risk of the particular patient's attempts to escape, when it had in fact had precautions in place. The third ground for appeal was there were many aspects of difficulty in implementing the precaution found by the trial judge making it unreasonable and impractical (such as the inability to seek security assistance in a timely manner, or the patient would not have known of the security officer's presence and thus would not be deterred from escaping), and the precaution could not be shown to have prevented the incident in any event.

The arguments were not accepted by the Court of Appeal. It was considered on the first point that while the trial judge ought to have invited further submissions on the findings, the State of Queensland was unlikely to have made different submissions to those made on appeal, which were unpersuasive. In relation to the second point, the Court did not consider the trial judge erred because she did not find the State of Queensland had taken no precautions, but rather that the State of Queensland did not have *relevant* precautions to prevent the particular risk of the subject incident from occurring. Finally, the Court of Appeal rejected the State of

Queensland's final argument on the basis that had the State of Queensland implemented a system where security officers could provide assistance, the incident would have been prevented by the security officer bearing the burden of preventing the patient's escape. Implementation of the precaution would have been beneficial in avoiding or minimising the relevant risk, and on the evidence, it was unlikely to have been problematic or prohibitively expensive in its operation.

The appeal was dismissed with costs.

IMPLICATIONS FOR YOU

It is clear from this decision that having some precautions in a workplace, for a known risk, is insufficient for an employer to discharge its duty of care to employees. It is important that employers have in place adequate and *relevant* precautions to address and prevent specific known risks, particularly where the precaution can be practically and reasonably implemented without imposing too great of a burden on the employer.

[State of Queensland v Ringuet \[2020\] QCA 61](#)

AUTHORS



YEN TRAN
ASSOCIATE

+61 7 3231 6329
yen.tran@bnlaw.com.au