

Friday 30th June 2017

Submission:

Civil penalties regime for non-consensual sharing of intimate images

I write to you as a survivor of a serious breach of privacy. My rights have been seriously overlooked subsequent to my incident, and laws in NSW and Australia are not capable of providing a single remedy to reduce the pain and humiliation that I have suffered. I am also concerned that people in the caring professions cannot be removed even when they behave in such an egregious way.

I ask that my identity be kept from publications.

However, I am happy for my submission to be published with my identity and contact details redacted

I will address the details below:

In December 2014, I was having gynaecological surgery to check for cancer. Before I was sedated there were four people in the room - the nurse, two male attendants and the male anaesthetist.

After I woke up in the recovery suite, I saw a nurse showing another nurse something on a mobile phone. The nursing colleague was unimpressed with what she was being shown and was very angry. I wondered what that phone was doing in the recovery room, but did not think about it again.

Five weeks later, my surgeon rang to tell me that while I did not have cancer, something else had happened during the procedure. Shortly after I was sedated, the nurse and the two male attendants positioned me in stirrups. My legs were wide open and apparently this is when the nurse took out her personal smartphone and took an explicit photo of my genitals. No one had given permission for this image to be taken. In fact, I expected a heightened sense of privacy given my body's position.

The nurse had shared the image with her colleagues. Two nurses had, thankfully, reported her to hospital executives. She was dismissed four days later.

The hospital made contact with me shortly after the phone call from my surgeon, explaining that their employee had “gone rogue” and that they could not ever have fathomed any of their staff carrying out such an act.

I asked for her name. The hospital response was that she was entitled to her privacy and they would not divulge.

I asked why she had done this. I was told that the nurse in question could give no explanation.

I asked the hospital if they had checked the phone to make sure the image had been deleted. They responded that asking the nurse to show them her personal smartphone would have been a breach of employee privacy, and that as she had left under such circumstances it was unlikely she would have allowed it anyway.

I was terrified. I knew just how fast that image could get onto the Internet and make life as I knew it forever changed. But surely the police could help me gain control of the image.

I rang NSW Police, filed a statement and waited. The two nurses who made the complaint were interviewed but not the violating nurse. These two nurses were angry that I had involved the Police. NSW Police told me that there was no applicable law in NSW that covered non-sexualised voyeurism offences. I had no legal recourse whatsoever. Had the incident occurred in Victoria or Queensland, then there would have been an applicable law. My violation would have been treated as a criminal matter. The police could not even approach the violator and ask her to hand over the phone for forensic analysis.

I begged the hospital to write to the nurse and ask her to offer the phone over to forensics. They eventually sent two letters but received no reply. After months of waiting I was officially told the nurse's details and told to write to her myself.

Once I had an actual name I was able to make statements and submit complaints with the NSW Nursing Midwifery Board, which meant that the Health Care Complaints Commission was notified.

All I wanted was to get hold of the smartphone and make sure that image was deleted.

This complaint process took three months. The board was also unable to ask their member to deliver up the smartphone, nor was I allowed to know why this had happened to me.

Surely this violation of patient trust and serious invasion of privacy would have been enough to have her deregistered. The board explained to me that the offence was not deemed serious enough to cancel her nursing registration. The nurse had not committed a criminal offence. She was required to complete a reflection activity and meet with a board to explain her actions. This nurse was then allowed to continue working unsupervised. She went on to work in another private hospital in theatres.

I have made submissions to the NSW Privacy Commissioner and the OAIC. They too were unable to legally address my incident and were horrified that there was no remedy.

The privacy laws only deal with information collected by a health service provider. It seems they don't apply if, as in my case, an image is collected by a rogue employee using a private phone (not part of the health service provider's records). Unless this is addressed, victims of similar incidents whilst under the care of hospital staff will never be able to receive effective remedies that allow for the minimisation of harm.

I have also discovered that regulatory bodies in NSW and Australia are effectively unable to remove registration from members who carry out such acts. Knowing that the nurse who violated me is still working as a nurse torments me daily.

I am prepared to present testimony at your hearings and would welcome the opportunity to speak about my incident and its impacts on my health, career and relationships.

I look forward to the committee's response in this inquiry.

Yours Sincerely

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