

# Determining whether to consent to the use of restraint on an elderly person in a care facility

Restraint is the use of a broad range of strategies specifically to manage or change a person's behaviour. Restraint may involve the use of lap belts, tabletops, posy restraints, bedrails, waterchairs, deep chairs, and/or medication.

## RELEVANT LEGISLATION

### NSW Nursing Homes Act 1988

**NSW Guardianship Act 1987** Section 4 - General Principles require that:

- the welfare and interests of the person under guardianship should be given paramount consideration;
- the freedom of decision and freedom of action of the person should be restricted as little as possible;
- the person's views should be taken into consideration and;
- the person should be protected from neglect, abuse and exploitation.

## POSITION STATEMENT

The Public Guardian views the use of restraint as an infringement on the personal liberty of a person and should only be used as a measure of last resort for the purpose of promoting and maintaining the person's health and well being. The Public Guardian endorses, and will strongly promote, the concept of restraint free environments and will work with relevant agencies and authorities to achieve this.

The Public Guardian supports the use of positive, non-restrictive procedures to assist a person with a disability. This may include:

- altering the person's physical environment;
- changing the mix of residents in a bedroom;
- avoiding activities or situations which provoke anxiety in the person;
- providing meaningful activities for the person;
- providing appropriate support to enable 'safe wandering'.

Further, the Public Guardian promotes the continuation of a person's quality of life including the maintenance of skills where possible, access to community life, and access to activities, family and other relationships of choice, protection of the person's privacy, and maximising the person's level of independence on a day to day basis. In relation to accommodation for elderly people, the Public Guardian supports a model of service delivery that promotes individual care, dignity of risk, protection from foreseeable harm and minimises the person's vulnerability to inappropriate practices.

## Using restraint

The reason often given for the use of restraint is to prevent injury to a person with a disability. However when restraint is used there is often a resulting loss of dignity to the person, which may leave the person feeling frustrated and powerless, and may lead to the person becoming depressed, agitated, upset and confused. The use of a restraint can also increase the risk of injury to the person. In considering whether to consent to the use of a restraint, the Public Guardian believes that the consequences of using that particular restraint must be identified and acknowledged. The Public Guardian considers that the benefit of the restraint must clearly outweigh the possible negative effect on the person and the risk involved if restraint is not used.

The Public Guardian has an expectation that service providers caring for elderly people will act in accordance with the general principles of the NSW Guardianship Act 1987. Prior to an application for consent to the use of a restraint, service providers will have ruled out all less restrictive alternatives and will have carefully considered all possible causes of the behaviour and made changes accordingly. If this behaviour occurs regularly, a written planned response is required and will only be consented to if it is designed to protect the person or others from physical harm, the actions are appropriately recorded and the proposal is time-limited and will be reviewed. The Public Guardian will only consider consent to the use of a restraint where there is clear evidence that the level of risk and potential harm outweighs the person's right to remain unrestrained.

In considering an application for consent to the use of a restraint the Public Guardian will seek the views of the person, where possible, as well as the views of family members and significant others.

Any plan for the restriction of a person's movement and liberty must be based on a specific assessment by a specialist clinician in aged care. The assessment should examine the underlying cause of the behaviour and rule out any possible medical or external causes for the behaviour that can be addressed through other means. This assessment should lead to the development and implementation of a care plan that minimises the need for the use of the restraint and is regularly reviewed by key people involved in the person's care and treatment.

The Public Guardian will not consent to the use of a restraint when it is proposed because the service context involves a lack of appropriate resources and untrained staff. In these circumstances the purpose of the proposed restraint would be seen to be attempting to address a service deficiency rather than meeting the individual needs of the resident.

#### **Duty of Care**

- Restraint may be used under a person's or organisations duty of care where the restraint is considered to be necessary and beneficial to the person.
- It is also necessary that the level of risk and the reasons for the prevention of injury outweigh the effects of the restraint.
- There are no objections to the restraint from the person or any interested person and its continued use is considered non-contentious.

Where an agency claims a duty of care in relation to the use of a restraint, the Public Guardian considers that upholding a person's civil liberties and legal rights is equally as important as the duty of care to ensure a person's physical safety. It is not acceptable for people to be placed in services that are so inadequately resourced that, in order to manage the person's behaviour, staff must use inappropriate and illegal practices.

In certain circumstances, such as when a service provider must act urgently to safeguard a person under guardianship and/or others, some restrictive practices may be defensible as action taken under the service providers duty of care.

#### **Physical restraint for medical purposes**

A person responsible or guardian with a medical and dental consent or health care decision making authority can consent to forms of restraint that are part of the medical treatment prescribed for the person, for example, a short term physical restraint following a surgical operation.

The proposed restraint should be documented in the care plan where medical and other treatment is recorded.

The restraint should be used solely for the purpose of promoting the health and well being of the person and its use should be regularly reviewed. Any objection by the person, either verbally or through their behaviour, means the guardian or person responsible can no longer consent to the use of the restraint.

An application to the Guardianship Tribunal should be made to request the authorisation necessary to consent to the use of the restraint, or to give a guardian authority to consent to the continued use of the restraint.

#### **Chemical restraint for non-medical purposes**

Consent to the use of medication to control a person's behaviour is regulated by Part 5 of the Guardianship Act 1987. If the person objects to the treatment only the Guardianship Tribunal can authorise the treatment or give a guardian authority to provide consent to the treatment against the person's wishes. Any application to the Public Guardian for consent to the use of a chemical restraint will be considered in the context of this policy.

## FACTORS CONSIDERED BY THE PUBLIC GUARDIAN BEFORE MAKING A DECISION.

### Views available

- What is the view of the person under guardianship regarding the possible use of restraint?
- What is the view of family members and others important in the person's life?

### Information from service providers concerning:

- the environmental factors which could contribute to or cause the behaviour;
- the possible health or medical factors which could contribute to or cause the behaviour;
- the possible communication needs of the person which may be contributing to the behaviour;
- whether less restrictive alternatives for managing the behaviour have been considered and ruled out as not appropriate.

### Does the resident care plan or the behaviour intervention plan consider:

- the safety and comfort of the person under guardianship?
- the specific needs of the person and her/his circumstances?
- involving the person with the disability, others important in the person's life and the Public Guardian?
- mechanisms to measure, monitor and review the effectiveness of the proposed interventions?
- training for staff in the use of the restraint?
- whether approval of an ethics committee is needed;
- ensure the person's access to activities and services during the use of the restraint?

The behaviour intervention plan must be in writing.

A proposal for the use of restraint, as part of a person's care plan, should be developed and reviewed by a suitably qualified professional.

### Restraint monitoring

Will the restraint be monitored by:

- maintaining a record of the frequency and duration of use of the restraint;
- reviewing the use of the restraint by the professional proposing the restraint;
- identifying appropriate review dates and those who will be involved in the review including the Public Guardian;
- making this data and information available to Public Guardian on request.

## OTHER RELEVANT ISSUES

- Is the proposed restraint able to be consented to under a medical consent function or does the Public Guardian require a restraint function?
- How serious is the behaviour? Does it pose a threat to the person or to others?
- Is restraint being proposed as a long term management strategy or a short term response to a crisis situation?

### Background material

*Standards and Guidelines For Residential Aged Care Services*, Aged and Community Care Division, Commonwealth Department of Health and Family Services 1998.

*Dementia and Community Support, Rights and Dementia Series*, The Aged-care Rights Service Inc.

*Dementia Care 1998 - 2003*, Alzheimer's Association NSW, June 1997.

Kratiuk-Wall, S. *The Dementia and Management Project*, Commonwealth Department of Human Services and Health, 1995.

## OTHER RELATED OPG POSITION STATEMENTS

Determining whether to consent to proposed medical or dental treatment