

# STATEMENT OF DECISION

<b>Respondent:</b>	<b>Ms Hyunh Kim Duyen Nguyen</b>
<b>Complainant:</b>	<b>Department of Health and Ageing</b>

*Confidential information has been removed from the Statement of Decision under Section 41B(4) of the Health Care Complaints Act 1993.*

## 1. The Complaint

- 1.1. On 17 December 2012, the Health Care Complaints Commission (the Commission) received a complaint from the Department of Health and Ageing that Ms Hyunh Kim Duyen Nguyen, an Assistant in Nursing (AIN) at a Sydney Aged Care Facility (the facility), had been found guilty of common assault on 6 December 2012. Ms Nguyen had been suspended from employment and charged following an allegation that she hit a 70 year old resident of the facility (Patient A) in the face with a closed fist twice at approximately 0715h on 22 August 2012.
- 1.2. This incident was directly witnessed by an Enrolled Nurse (Witness 1) and subsequently jointly reported to the management of the facility by Witness 1 and an Endorsed Enrolled Nurse (Witness 2), who spoke to Patient A shortly afterwards.
- 1.3. Under the *Crimes (Sentencing Procedure) Act, 1999*, Ms Nguyen was convicted and sentenced to a term of imprisonment of three months which was suspended on entering a Section 12 bond<sup>1</sup> for a period of three months, with court costs amounting to \$83.

## 2. Respondent

- 2.1. Ms Nguyen (d.o.b. 24 February 1975) was first employed as an AIN at the facility on 26 November 2008.

## 3. Summary of Evidence

- 3.1. During the course of the investigation, the Commission reviewed the written statements compiled by the facility and the police Brief of Evidence. Ms Nguyen has been contacted by the Commission but so far has not provided a response to the complaint.

### ***Patient A***

- 3.2. At the time of the incident, Patient A was a 70 year old resident at the facility who had previously suffered a large cerebrovascular accident, leaving him with communication deficits and loss of function down the left side of his body. At the time of this incident he had been a resident for approximately six months. The clinical record notes he is fully dependent for activities of daily living. He requires two assistants for bed mobility and transfers and one assistant to maintain a sitting position. Nursing staff have to attend to his personal care in bed.

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<sup>1</sup> Good Behaviour Bond

- 3.3. At the time of this incident, Ms Nguyen had been in direct care of Patient A for approximately three months.

### ***Witness Evidence***

- 3.4. The evidence indicates that the physical assault on Patient A was directly witnessed by Witness 1. Witness 1 completed an accident / incident report to the facility and a statement to police. Witness 1 stated that, at approximately 0710h on 22 August 2012, she and Ms Nguyen entered Patient A's room to prepare him for the day as part of their normal morning duties. Together they positioned Patient A so that he was lying on his side facing Ms Nguyen, who was holding him in place, whilst Witness 1 changed his sheets and pants. Once Witness 1 finished these duties, Patient A was rolled onto his back. In her police statement Witness 1 described Ms Nguyen's next actions in the following words: *"When [Patient A] was role back onto his back I saw Duyen holding [Patient A] right arm down over his head with her left arm, she then punched [Patient A] to the right side of his head with a close right fist two times."* Patient A looked shocked and then started crying. Witness 1 told Ms Nguyen to stop, which she did. A short time later both carers left the room.
- 3.5. Witness 2 also completed a statement to police. In this she stated that at approximately 0720h on 22 August 2012, she approached [Patient A] to check his sugar levels as he is diabetic. She saw Patient A was upset - *"crying and restless."* Witness 2 then stated that Patient A does not speak English and when she asked him what had happened, he *"began to make the action of striking his face, he was using his right hand and making the actions of punching his own face."* Not long after this Ms Nguyen walked past and Witness 2 stated Patient A *"became more animated and started to point at Duyen until she was out of sight."* Witness 2 was confused as to what had happened so she spoke to Witness 1 (whom she knew had done morning rounds with Ms Nguyen) and Witness 1 told her about the assault. Both witnesses then reported the incident to the sister-in-charge.
- 3.6. Later that same day, Ms Nguyen had a meeting with the facility Director of Nursing (DON). It is alleged by the DON that, at this meeting, Ms Nguyen initially denied hitting Patient A but then later in the meeting Ms Nguyen admitted to hitting him. The DON informed police, Department of Health and the facility General Manager.
- 3.7. Ms Nguyen was subsequently formally interviewed by the facility on 24 August 2012. In attendance were Ms Nguyen, the DON, the General Manager and Ms Nguyen's Aunt, acting as a support person and interpreter. During this interview Ms Nguyen denied striking Patient A and further denied admitting to hitting him to the DON on 22 August 2012.
- 3.8. Ms Nguyen was interviewed by police on 3 September 2012. During this interview Ms Nguyen again denied hitting Patient A, stating *"I didn't hit him in any way whatsoever and I have no reason to hit him at all."* She was subsequently charged with common assault.

- 3.9. Court proceedings were originally set down for 19 November 2012 at Bankstown Local Court, with Ms Nguyen entering a plea of 'Not Guilty'. However, on the day, Ms Nguyen changed her plea to 'Guilty'.

#### **4. Findings**

##### ***Breach of the Code of Conduct for Unregistered Health Practitioners***

- 4.1. Ms Nguyen plead guilty to common assault before Bankstown Local Court and was sentenced to a term of imprisonment of three months which was suspended on entering into a good behaviour bond for a period of three months pursuant to Section 12 of the *Crimes (Sentencing Procedure) Act, 1999*. The assault occurred whilst Ms Nguyen was providing a health service within the meaning of the *Health Care Complaints Act, 1993* (the Act). As a qualified AIN at the time of this incident, Ms Nguyen is bound by the Code of Conduct for Unregistered Health Practitioners, section 100 of the *Public Health Act, 2010* (the Code of Conduct).
- 4.2. Based on Ms Nguyen's guilty plea, the evidence supports a finding that Ms Nguyen breached clause 3(1) of the Code of Conduct, namely that health practitioners are to provide health services in a safe and ethical manner.

##### ***Risk to the health or safety of members of the public***

- 4.3. In order to take action under section 41A of the Act, the Commission must be satisfied that there has been a breach of the Code of Conduct and be of the opinion that the conduct behind the breach is such that the practitioner poses a risk to the health or safety of members of the public.
- 4.4. It is noted that Ms Nguyen did express regret for her actions upon being sentenced before Bankstown Local Court. However, Ms Nguyen's actions were an unprovoked attack against an elderly, frail and vulnerable patient. Due to the nature of the assault, I am of the opinion that Ms Nguyen does pose a risk to the health or safety of members of the public. As Ms Nguyen has not responded to the Commission it is not known whether she intends to return to work as an AIN.

#### **5. Determination**

- 5.1. I find that Ms Nguyen has breached the Code of Conduct for Unregistered Health Practitioners - *Public Health Act 2010*, section 100, clause 3(1) and poses a risk to public health and safety. Having determined this, the Commission makes the following prohibition order under section 41A(2)(a)(i) of the Act:

Ms Nguyen is prohibited from working as an AIN, either paid or voluntary, for three years.

- 5.2. The Commission proposes to issue the following public statement under section 41A(2)(b) of the Act:

*The NSW Health Care Complaints Commission conducted an investigation into the professional conduct of Assistant in Nursing, Ms Huynh Kim Duyen Nguyen.*

*The investigation found that Ms Nguyen breached the Code of Conduct for Unregistered Health Practitioners – Public Health Act 2010, section 100, clause 3(1) by failing to provide a health service in a safe and ethical manner during her care and treatment of Patient A at approximately 0715h on 22 August 2012 at a Sydney Aged Care Facility. Specifically, the investigation established that, in the course of changing Patient A's sheets and pants, Ms Nguyen hit Patient A in the face with a closed fist twice.*

*On 6 December 2012, at Bankstown Local Court, Ms Nguyen pleaded guilty and was convicted of common assault and sentenced to a term of imprisonment of three months which was suspended on entering a good behaviour bond.*

*As a result of the investigation, the Commission imposed the following prohibition order:*

*Ms Nguyen is prohibited from working as an AIN, either paid or voluntary, for three years.*

**Kieran Pehm  
Commissioner  
Health Care Complaints Commission**