

STATEMENT OF DECISION

Respondent:	Miss Leanne Powderly
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The Commission has removed from this Statement of Decision material which it considers to be confidential information under section 41B(5) of the *Health Care Complaints Act 1993* (the Act).

1 Background

- 1.1 On 26 June 2020, the Commission received a complaint from Southern Cross Care NSW about the conduct of Ms Leanne Powderly. It is alleged that on 11 April 2020, Ms Powderly verbally and physically assaulted a resident. In particular, it was reported that Ms Powderly became agitated with the resident when assisting with toileting and slapped the resident on her elbow and said “If you slap me, I will slap you, bitch.” It is further alleged Ms Powderly mocked the way she spoke.
- 1.2 The incident was reported to NSW Police.

2 The Respondent

- 2.1 Ms Leanne Powderly was employed for over 11 years as an Assistant in Nursing / Care Service Employee (an unregistered practitioner providing a healthcare service) at Young Residential Aged Care Facility operated by Southern Cross Care (SCC).
- 2.2 On review of Ms Powderly’s record at SCC, there is one internal report of verbal abuse in 2018. It was alleged that she had an unkind and unfriendly tone, raising her voice to a resident, and later calling that resident a “*pig of a man*”. No further action was taken.
- 2.3 There are no prior complaints to the Commission and NSW Police confirms that there are no relevant prior complaints in the criminal jurisdiction.

3 The Subject

- 3.1 The resident [Resident A] was 96 years of age at time of the incident. She was a long-term resident suffering from advanced dementia. Resident A was mainly non-verbal and had been internally reported to have become agitated towards other patients and staff, slapping and spitting at them.
- 3.2 Resident A is now deceased.

4 The Complaint

- 4.1 On 26 June 2020, the Commission received a complaint from SCC about the conduct of Ms Powderly. It is alleged that on 11 April 2020, Ms Powderly:
 - 4.1.1 became agitated with Resident A when assisting her with toileting;
 - 4.1.2 slapped Resident A on her elbow and said ‘*If you slap me, I will slap you, bitch*’; and,
 - 4.1.3 mocked the way Resident A spoke, telling her to speak English.

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5 Issues

5.1 The Commission investigated the following issues:

- 5.1.1 whether Ms Powderly breached the Code of Conduct for unregistered health practitioners (**Code of Conduct**) made under Schedule 3 *Public Health Regulation 2012*, in relation to her care and treatment of Resident A; and
- 5.1.2 whether Ms Powderly poses a risk to the health or safety of members of the public.

5.2 The relevant clause in the Code of Conduct is:

- 5.2.1 Clause 3(1): *A health practitioner must provide health services in a safe and ethical manner.*

6 Summary of Evidence

6.1 The Commission obtained information from SCC, NSW Police, and obtained a response from Ms Powderly.

SCC – Internal Investigation

- 6.2 The Commission received the outcome of SCC's internal investigation, Human Resources documents and internal correspondence with Ms Powderly.
- 6.3 The incident report for this event records a brief description of the incident by a witness (Witness B) that while assisting Resident A to the toilet, Resident A "*punched staff in the arm and yelled get out of it.*"
- 6.4 During SCC's investigation into the incident, Ms Powderly was given the opportunity to respond to the allegations and was then suspended on full pay and stood down. The investigation records that Ms Powderly admitted slapping Resident A's hand away, telling her to speak English and mocking the way she spoke. Ms Powderly stated the contact was a "*reflex.*" Ms Powderly advised she did not know why she mocked the way Resident A spoke. Ms Powderly denied calling Resident A, a "*bitch.*"
- 6.5 In the course of the SCC investigation, a referral was made to the Aged Care Quality and Safety Commission.

SCC – Incident/Clinical Reporting Notes for Resident A

- 6.6 Internal reporting notes and incident reports over eight years were also obtained from SCC.
- 6.7 It was observed that with all reportable incidents, the notes by the various care workers involved recorded what had occurred as a separate entry with a brief narrative.
- 6.8 Ms Powderly tended to follow this protocol. She also tended to record simple '*leisure/lifestyle*' events such as '*she enjoyed [a certain] movie*' or general care issues such as difficulty getting dressed, or incontinence issues. Her notes were usually quite detailed.

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- 6.9 There were two instances where Resident A became 'verbal' towards Ms Powderly, but there is no mention in Ms Powderly's notes of hitting or slapping by Resident A.
- 6.10 For this incident, apart from the Incident Report itself, there is a note recorded later that day. Ms Powderly made this in conjunction with the Registered Nurse on duty (Person C). This record states '*Resident incident, please see incident form for further details.*'

NSW Police

- 6.11 No charges were laid with respect to this incident.

Witness B

- 6.12 As noted above, Witness B witnessed and reported the incident.
- 6.13 A formal recorded interview of Witness B was conducted by the Commission. The interview was transcribed.
- 6.14 Witness B's recollection was that Resident A had become agitated while being changed and toileted. Resident A "*was sort of trying to get away, and [Ms Powderly] sort of sat her down on the toilet and [Resident A] became more agitated and started trying to slap [Ms Powderly].*"
- 6.15 Witness B stated that Ms Powderly "*started getting in [Resident A's] face ... saying "speak English" and all this sort of stuff, and slapped [Resident A] quite hard on the elbow, and she – [Resident A] sort of started trying to spit, and that's when [Ms Powderly] said, you know, "If you spit on me I'm going to spit on you," and [Resident A] – she couldn't really speak properly, and [Ms Powderly] kept mocking the way she spoke, and she said, you know, "Speak English" and all this sort of stuff.*"
- 6.16 Witness B appeared honest and candid about what Witness B saw and heard.

Ms Powderly

- 6.17 Ms Powderly, who was assisted by a legal representative, was given the opportunity to respond to Witness B's version of events. She also appeared to speak honestly and candidly.
- 6.18 Ms Powderly stated that when she was toileting Resident A on the day in question, Resident A was aggressive, "*she was throwing her arms around – hitting... I was asking her not to hit, to stop hitting, and when she punched me in the stomach that's when my hand went up as a reflex – open-handed – the back of it, touched her on the elbow and I pushed her away. So that was more or less the slap. It wasn't really a slap. It was just deflecting her from punching me anymore.*"
- 6.19 Ms Powderly stated that Resident A was always aggressive in her behaviour.
- 6.20 Ms Powderly admits to saying "*speak English*" to Resident A but was unable to provide an explanation for why she did so. She states she just "*blurted it out.*"
- 6.21 Ms Powderly stated that in response to Resident A's aggressive behaviour, sometimes she would put her hand on her arm and push her hand down and say "*don't hit.*" In this

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case, her hand “*just went up and connected with her and that’s what happened that day.*”

7 Submissions

- 7.1 The Commission wrote to Ms Powderly on 6 September 2021, proposing to take action under sections 41A and 41B of the Act and inviting submissions under section 40 of the Act. Ms Powderly was provided with a draft copy of the Statement of Decision in this matter, together with a copy of the Commission’s Reflection Tool for Unregistered Practitioners.
- 7.2 No submissions were received by Ms Powderly in relation to the proposed action within the 28-day statutory timeframe.
- 7.3 Ms Powderly completed the proposed self-reflection form and returned it to the Commission after the 28-day statutory timeframe. Whilst Ms Powderly noted she was sorry for the incident, her response demonstrated limited insight, and was somewhat combative in tone.
- 7.4 Accordingly, the Commission determined to proceed with the proposed action.

8 Findings

- 8.1 In her role as an Assistant in Nursing / Care Service Employee, Ms Powderly was afforded significant trust by family members and the wider community to provide a safe environment and deliver appropriate health care to the residents.
- 8.2 Given Resident A’s challenging behaviours, which Ms Powderly had witnessed, including spitting and slapping, Ms Powderly was on notice that these behaviours were likely to be repeated in all interactions with Resident A.
- 8.3 Ms Powderly has displayed a lack of appropriate care and appropriate response towards a dementia patient who was exhibiting challenging behaviours. She has also demonstrated a lack of insight into her behaviour.
- 8.4 Based on the evidence outlined above, Ms Powderly has engaged in reckless conduct likely to endanger the health and safety of a vulnerable, elderly resident in her care.
- 8.5 Ms Powderly’s admission to saying “speak English” to Resident A demonstrates a degree of frustration and insensitivity to the nature of dementia patients in general.
- 8.6 Based on the conduct of Ms Powderly, the Commission has determined that Ms Powderly has breached clause 3(1) of the Code of Conduct by failing to provide services in a safe and ethical manner to Resident A. The Commission also considers that Ms Powderly’s actions poses a risk to the health and safety of members of the public.
- 8.7 In light of the circumstances of this breach, the Commission has determined that:
 - 8.7.1 Ms Powderly’s conduct poses a risk to the health or safety of members of the public and issues a prohibition order in the terms set out below;
 - 8.7.2 Notwithstanding this breach the Commission notes, Ms Powderly has been working in aged care for 11 years and during this period has been subject to only one complaint,

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and it is appropriate that she have the opportunity to return to a role as an unregistered health practitioner if she is able to demonstrate insight into her behaviour and take steps to improve her practice.

9 Determination

9.1 Based on the evidence and findings outlined above, the Commission makes the following prohibition order under section 41A(2)(a) of the Act:

Ms Leanne Powderly is prohibited, under any circumstances, to provide, or cause to be provided, any health services, either in paid employment or voluntarily, to any member of the public.

This prohibition order will remain in place until Ms Powderly can satisfy the Commission that she has:

- 1. Demonstrated that she acknowledges and understands the risks posed to vulnerable patients if intimidating behaviour occurs during their care; and*
- 2. Completed an appropriate training course in the provision of care and treatment for persons with dementia. The course must have an Assessment component.*

9.2 For the purposes of this order, a health services carries the same meaning as defined under section 4 of the Act.

9.3 The Commission also issues the following public statement under section 41(2)(b) of the Act:

*The Health Care Complaints Commission (the Commission) investigated a complaint concerning Ms Leanne Powderly, an unregistered health practitioner, who provided services as an Assistant in Nursing / Care Service Employee at the Young Residential Aged Care Facility operated by Southern Cross Care (**the Facility**).*

The Commission's investigation found that on 11 April 2020, Ms Powderly demonstrated a lack of appropriate care and inappropriate intimidating behaviour towards a dementia patient who was exhibiting challenging behaviours.

In providing health services in an aged care facility, Ms Powderly was afforded significant trust by the residents and their families, to provide a safe environment and to deliver appropriate health care to residents who were particularly vulnerable.

The Commission considered that based on Ms Powderly's conduct, she has breached clause 3(1) of the Code of Conduct, in that she engaged in intimidating behaviours and failed to provide health services in a safe and ethical manner. The Commission also considers that Ms Powderly poses a significant risk to the health and safety of members of the public.

Accordingly, the Commission has prohibited Ms Powderly from providing any health services in any capacity.

This prohibition order will remain in place until Ms Powderly can satisfy the Commission that she has:

- 1. Demonstrated that she acknowledges and understands the risks posed to vulnerable patients if intimidating behaviour occurs during their care; and*

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2. *Completed an appropriate training course in the provision of care and treatment for persons with dementia. The course must have an Assessment component.*

9.4 Under section 41D of the Act, the Commission will provide a copy of this Statement of Decision to:

- The Australian Health Practitioners Regulation Agency (AHPRA);
- Each Professional Council in NSW.

9.5 The Commission has determined to make this statement of decision publicly available under s41B(3)(c) of the Act.



Tony Kofkin
Executive Director, Complaints Operations
11 November 2021