



health and care update

May 2009

The Legal Liability for Acquired Infection by Patients

MRSA and C-Diff are high profile in the media and are major causes of concern for those involved in the treatment and care of the sick and elderly.

Nursing and care homes could be liable for both failure to prevent infection and failure to treat infection if a patient acquires a super-bug whilst in their care. In order not to breach its duty, the following issues need to be addressed:

Preventing infection:

1. Testing on admission;
2. A detailed and enforced hygiene regime;
3. An explicit hygiene regime for visitors.

Treating infection:

1. The risk of MRSA carriers;
2. The need to test and provide appropriate therapy including medical treatment for those patients who are infected.

In recent cases, those making claims have sought to rely on the Application of the Control of Substances Hazardous to Health (COSHH) Regulations, mainly because:

1. Liability under the Regulations is strict;
2. The obligation is on the nursing home/care home to prove compliance with the Regulations.

The COSHH Regulations apply to substances hazardous to health, including biological agents, and require an employer to prevent exposure to these substances. This duty also applies to any person who might be affected by the work carried out by the employer - in other words the patient.

As yet there is no binding authority that states that COSHH does apply, however, it is inevitable that there will be further attempts to rely on these Regulations to cover acquired infections such as MRSA and C-diff.

Register now for our email newsletters!

If you would like to receive this or any of our other newsletters by email register your details at www.nelsonslaw.co.uk/emailnewsletters

Migration Advisory Committee Recommends UK Shortage Occupation List

The Migration Advisory Committee, an independent panel of economists, has recently published a list of jobs for which the UK has a shortage of skilled workers, for the purposes of tier two of the new points-based immigration system. This has been adopted by the Home Office. The list includes certain occupations as well as other (specific) job titles. The fact that care workers are restricted to "skilled senior care worker[s]", defined as those earning at least £8.80 an hour, has been criticised as average wages in this sector are lower.

New Rules will Further Restrict Overseas Job Advertisements in Relation to Nursing

Home Secretary Jacqui Smith has announced new measures to ensure that British workers (and presumably other EU nationals) receive priority for any job vacancies available during the current economic climate. The plans will involve a tightening of the "resident labour market test", which is used to decide whether to grant a sponsorship licence to enable an employer to recruit workers from outside the EU. Employers will no longer be able to advertise abroad for skilled jobs such as nursing without first advertising in local Jobcentre Plus branches.

Seminar Programme

Nelsons run a programme of seminars specifically for GPs and have recently held two seminars, the first looking at issues in partnership law and the second focusing on employment law matters with an emphasis on unfair dismissal and discrimination. We will be arranging further seminars as part of this programme in due course and the details will be advertised in this update once the topics and dates have been confirmed.

If you would like to receive the information from the most recent seminars, please contact Sarah Jamieson on 0115 851 1283 or email sarah.jamieson@nelsonslaw.co.uk



Nelsons' Health and Care Unit

Nelsons' Health and Care Unit brings together lawyers who have specialist and in-depth experience in advising and acting for a broad range of organisations in the health and care sectors to include GPs, dentists, residential and care homes, children's nurseries and pharmaceutical companies.

We adopt an advisory role to help with the strategic planning for the organisation and aim to provide a practical and seamless legal service advising on:

- Care Standards Legislation
- Regulations and Corporate Governance
- Acquisitions, mergers and disposals
- Management buy-outs and buy-ins
- Partnership agreements
- Data Protection
- Supply and purchase contracts
- Business leases
- Property finance and commercial property development
- Building contracts and building claims
- Professional appointments and warranties
- Commercial dispute resolution including mediation
- Employment matters
- HSE Legislation and Compliance issues
- Breach of Regulations
- Partnership disputes

Our experienced team of health and care sector specialists includes:



Chris Rees, Partner, Corporate Group

Chris Rees trained with Nelsons and progressed to partnership in 2005 following qualification in 2000. He has particular expertise in the health and care sectors and his principal focus is on all types of corporate transactional work including acquisitions, disposals, MBOs, MBIs, reorganisations and restructurings, joint ventures and other investment related transactions.

Email: chris.rees@nelsonslaw.co.uk



Jim Carter, Partner, Commerce & Technology

Jim joined Nelsons in 1984 on qualification and was made a partner in 1988. He has specialised in partnership law throughout his career and has a longstanding expertise in advising GPs in relation to partnership

admissions, departures, agreements and related documentation. He is a leading lawyer in this field in the East Midlands who has presented several seminars on partnership law to GPs in the region.

Email: jim.carter@nelsonslaw.co.uk



Melanie Oswin, Partner, Commercial Property

Melanie Oswin qualified in 1994 and joined Nelsons in 2001 becoming a partner in 2002. She heads Nelsons' Insolvency team and also deals with commercial property matters.

Melanie has particular expertise in the property finance sector and is highly regarded for her banking and securitisation work as well as assisting clients in dealing with the realisation of finance from property in insolvency and turnaround situations. Melanie has considerable experience in dealing with commercial property issues for the healthcare sector and has advised distressed businesses in this sector.

Email: melanie.oswin@nelsonslaw.co.uk



Deborah Ritchie, Partner, Construction

Deborah qualified in 1991 and joined Nelsons as a Partner in 2008. She is experienced in drafting and advising on construction documents for developers, institutional investors, contractors, professionals and end-users on a wide range of projects including primary health care, residential schemes, commercial property and process plant. Deborah is an experienced advocate and regularly advises on and resolves disputes using mediation, adjudication, arbitration and litigation.

Email: deborah.ritchie@nelsonslaw.co.uk



Keeley Baigent, Partner, Employment

Keeley joined Nelsons in 2001 and qualified in 2002 becoming a partner in 2008. She advises on a wide range of employment law matters, including the drafting of bespoke contracts of employment, work place policies and procedures and dealing with disciplinary and grievance procedures.

Email: keeley.baigent@nelsonslaw.co.uk



Chris McKinney, Partner, Dispute Resolution

Chris qualified in 1984 and joined Nelsons as a partner in 2000. He is experienced in dealing with conflict resolution in the health and care sectors and can advise on HSE legislation and compliance issues, breach of Regulations, contract claims, partnership disputes, director and shareholder disputes and professional negligence. He is also a trained mediator.

Email: chris.mckinney@nelsonslaw.co.uk

Nelsons Solicitors LLP

Sterne House
Lodge Lane
Derby
DE1 3WD
01332 372372

Provincial House
37 New Walk
Leicester
LE1 6TU
0116 222 6666

Pennine House
8 Stanford Street
Nottingham
NG1 7BQ
0115 958 6262

nelsons
www.nelsonslaw.co.uk