circumstances. Mr Slane's investigation, noted above, is to ascertain whether a justified disclosure has occurred. It is clear that Mr Pugmire is a health agency in terms of the Code and that the information he disclosed concerning the patient was health information.

The relevant Rule in the Code says that a health agency may ordinarily only disclose health information with the authorisation of the individual concerned (or from his/her representative where the individual is unable to give authority (sic)). In the present case, however, a health agency may also disclose an individual's health information

- where it is not desirable or practicable to obtain authorisation to disclose from the individual or his or her representative;

  and

- disclosure is necessary to prevent or lessen

- a serious and imminent threat
  - to public health or public safety or
  - to the life or health of an individual.

One question which Mr Slane will have to consider in his investigation is whether the nature of the threat, and the necessity of disclosure to prevent or lessen that threat, is to be evaluated at the time of the disclosure, or in the light of events that occur afterwards. How relevant is it, for example, that in the six or so months since the discharge of the patient he has not committed (or more accurately not been charged with) any offences of the type that Mr Pugmire warned about?

If Mr Slane finds that Mr Pugmire has breached the Code and that this constitutes "an interference with the privacy" of the patient, then GoodHealth Wanganui, Mr Pugmire's employer, might also be liable, unless it took steps reasonably practicable to prevent Mr Pugmire from making the disclosures. His employer suspended him for unauthorised disclosure of confidential patient information, which was defined as a matter of "serious misconduct" in a document known as "Disciplinary Procedures and Rules of Conduct". In the Employment Court, Mr Pugmire claimed that his superiors at Lake Alice knew of and approved of his sending the letter to the Minister (his employer took action over the disclosure to Mr Goff). The Crown health enterprise's internal rules would probably count as a "step reasonably practicable" to prevent Mr Pugmire from making the disclosure, but the sanction that Mr Pugmire's superiors allegedly gave to the first disclosure might counter this. It is not apparent that the employer actively took steps to prevent disclosure to one politician but not to another.

Possible "whistleblower" legislation
Mr Goff is sponsoring a private member's bill to provide protection for individuals who bring information concerning corrupt, illegal or harmful activity to the attention of relevant authorities. Two government Ministers (Messrs East and Graham) have indicated their general support for some form of legislation. Overseas experience is that employees who "blow the whistle" are frequently vilified, especially by employers. Mr Goff's bill would provide protection to a person who discloses to a statutory authority information which he or she reasonably believes to be true, relating to any conduct or activity which, among other things, constitutes a "significant risk or danger, or is injurious to, public health or public safety". The statutory authority can then investigate and where appropriate refer the matter to an enforcement authority or for corrective action by the agency involved. This might not include, on the bill as worded, an inquiry into the need for legislative change such as Mr Pugmire was calling for.

The "New" New Ethics Committees

Since the establishment of a new ethics committee structure in 1989 there have been a number of changes to ethics committee structure and function culminating in the latest set of guidelines.

In 1991 a revision of the National Standard for Ethics Committees was issued. Then when the health reforms were introduced replacing Area Health Boards (AHBs) with RHAs and CHEs, it became obvious that a new structure for ethics review, not tied to the old AHB structure, had to be devised. A working party called the Interim Taskgroup on Health and Disability Service ethics was convened to consider this problem and report to the minister. The Interim Taskgroup reported in February and the Ministerial decision was announced in June.

The new arrangement was that there should be regional ethics committees funded but not controlled by RHAs. They would be accountable to RHAs for their budget and to a new National Advisory Committee on Health and Disability Service Ethics (NACHDSE) for their functioning and their decisions. Their role still embraces both research and clinical issues. They will be accredited either by the HRC or by the Director General of Health on advice from the National Advisory Committee. They will comprise at least seven members, half lay and half professional and with three Maori members. They are primarily responsible to ensure the protection of patients when research or innovative treatment occurs but they are also to have a proper interest in any matter that raises ethical issues in relation to Health Care. There will be an accredited committee for every region in New Zealand and only review by such a committee will constitute adequate ethical approval for a research or treatment protocol (in terms of the ARCI Act, research funding, or professional conduct requirements).

The net effect of these changes is to provide a comprehensive national structure within which ethical review of Health Care research and services can be carried out. In addition to local and national committees, the system is expected to function in close liaison and working relationships with the HRC, with a National Committee on Assisted Reproductive Technologies (which will probably be a subcommittee of the NACHDSE even if the membership is different). The informal `networking' meeting of Ethics Committee chairpersons is to continue to serve that valuable function and there is to be a national meeting of Maori members on a similar basis.

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