

Managing Disputes about Medical Treatment Decision-Making Case Study



Samir's story

Samir is an 85-year-old man with Chronic Obstructive Pulmonary Disease (COPD). He requires therapeutic oxygen via a nasal cannula, and uses routine and PRN inhalers to manage his condition. He can quickly become short of breath after walking short distances, and has recently had a prolonged hospital stay due to complications arising from his condition. He resides at the Redvale Aged Care Lodge. He has an Advance Care Directive that refuses life-saving treatment, which is filed in Redvale's records, but it is not noted elsewhere at the facility and the nursing and carer staff are not aware that he has one. Samir has told his daughter Amali that he does not want to go to hospital if he becomes unwell again.

One afternoon Samir feels short of breath after returning from the bathroom and presses his call button. Felicity, a Registered Nurse, attends on him. She assists Samir to administer his inhaler (in accordance with his medication plan). After 5 minutes Samir tells her that his breathing has slightly improved but not fully resolved, and that he feels fatigued. Felicity assumes that this will resolve with further rest, and tells Samir that she will return to check on him shortly.

Felicity commences her rounds and becomes preoccupied assessing another resident and then attending an emergency situation. She does not mention Samir's condition to her colleagues or Nurse Manager, or return to check on him for an hour. When Felicity returns to Samir's room she finds him experiencing breathing difficulties, feverish and unable to communicate. Felicity immediately calls an ambulance. Samir is transferred to hospital, where he is diagnosed with pneumonia and treated with IV antibiotics.

While Samir is at the hospital Sharon, Redvale's Manager, calls Amali, Samir's daughter. On hearing about Samir's deterioration and transfer to hospital Amali becomes upset that Samir is receiving treatment despite his Advance Care Directive, and that she was not contacted earlier. She says her father will be distressed to be in hospital receiving treatment, and that she will be making a formal complaint about Samir's care.

Points for reflection

1. What steps can Sharon take to manage this situation?
2. What can Sharon do to prevent similar incidents at Redvale in the future?
3. What options are available to Samir and Amali if they remain unsatisfied?

Legal considerations on the points for reflection

1. What steps can Sharon take to manage this situation?

Meeting with Samir and Amali

Early, proactive communication by Sharon may be able to resolve Samir and Amali's concerns, and prevent escalation.

Sharon should invite Samir and Amali to meet with her, as the manager of the staff involved, as soon as possible. Prior to meeting with them Sharon should conduct an investigation, including speaking with the staff who were involved in Samir's care to ascertain the details of the incident. This is discussed further below.

The meeting (or case conference) with Samir and Amali would enable further exploration of their concerns, and discussion of improvements to better manage Samir's future care. Sharon should advise them of actions she is taking to identify and address systemic issues emerging from the incident e.g. reviewing Redvale's system for managing residents' Advance Care Directives and planning documents, to make them more accessible.

Sharon could also, on behalf of the staff involved, offer an apology to Samir and Amali.

Meeting with Redvale staff

All aged care providers are required to have **policies and procedures on complaints and dispute management**. These policies would require an investigation into the incident, and that Sharon meet with Felicity and the Nurse Manager to determine what events took place that led to Samir's deterioration and hospitalisation. They may also need to complete a complaint or incident form.

In meeting with those staff members Sharon could explore:

- Whether Felicity is familiar with relevant **policies on managing deteriorating residents**, and require that she undertake training on this if necessary. Escalating Samir's condition to the Nurse Manager may have resulted in more frequent assessments of Samir before he significantly deteriorated. It may also have led to discussions with Samir, while he had capacity, about his Advance Care Directive and

preferences around hospital transfer. Further information about recognising and responding to deterioration is available in *ELDAC's Residential Aged Care Toolkit* (<https://www.eldac.com.au/tabid/5025/Default.aspx>) and *Primary Care Toolkit* (<https://www.eldac.com.au/tabid/4924/Default.aspx>).

- Why Amali was not contacted prior to Samir's emergency hospital transfer, and involved in decision-making around transferring and treating him. When Samir was discovered by Felicity he could not communicate, indicating that he did not have capacity to make a decision about transfer to hospital or treatment. **Where a person lacks capacity, it is important for aged care workers and health professionals to involve the person's family or substitute decision-maker in all discussions about the person's care and treatment, including going to hospital.**

In this case, a staff member should have contacted Amali to inform her about the situation (for example while the ambulance was on route, or while the paramedics were attending to Samir at Redvale). Contacting Amali would likely have revealed the existence of Samir's Advance Care Directive refusing treatment, as well as his wishes not to be transferred to hospital.

For further information visit the **ELDAC Legal Toolkit *Emergency medical treatment*** factsheet (<https://www.eldac.com.au/tabid/5274/Default.aspx>)

2. What can Sharon do to prevent similar incidents at Redvale in the future?

Ways in which Sharon could prevent similar incidents in the future include:

- **Improving recording, awareness and accessibility of residents' Advance Care Directives.** As Samir's Advance Care Directive was not sufficiently visible in Redvale's records Felicity was not aware of his treatment refusal, or his preference not to go to hospital. It is important that aged care providers have appropriate systems in place to ensure their staff:
 - are aware the person they care for has a Directive or other Advance Care Planning documents,
 - understand the person's care and treatment preferences, and
 - can easily access those documents, particularly in urgent situations.

A useful guide for implementing Advance Care Planning within aged care organisations can be found at *Advance Care Planning Australia* (<https://www.advancecareplanning.org.au/docs/default-source/acpa-resource-library/acpa-publications/advance-care-planning-in-aged-care-implementation-guide.pdf>).

As Samir also had a prolonged hospital stay prior to the incident it would have been good practice for the facility to revisit Advance Care Planning and/or review his Advance Care Directive with him after his return. This would have helped ensure his treatment and care decisions and preferences were up to date, and that staff were aware of his Directive.

- **Providing information, education, training and support to staff about Advance Care Planning, end of life decision-making, substitute decision-making, and consent in emergencies.** This would support Redvale's staff to undertake Advance Care Planning; know what to do when situations like Samir's arise; and identify who to involve in decision-making e.g. substitute decision-makers, families. Further information on these topics is available from the *ELDAC Legal Toolkit* (<https://www.eldac.com.au/tabid/4902/Default.aspx>).

More practical tips: Advance Care Directives and Planning

It is important to remember that:

- A person can only make an Advance Care Directive if they have decision-making capacity. If they do not have capacity, generally a substitute decision-maker e.g. a family member or friend must be called upon to make a decision.
- Making an Advance Care Directive is voluntary – a person may choose not to make a Directive, and cannot be required by an aged care provider to do so.
- Advance Care Planning discussions can occur early e.g. when a resident enters aged care, or can be undertaken by staff with residents (and if the person consents, their family) at any time.
- It is good practice after a person experiences deterioration e.g. is hospitalised and returns to a facility, or experiences a significant change to their health, to revisit Advance Care Planning discussions and/or review existing documents.

For more practical tips and information visit:

- *Advance Care Planning Australia* (<https://www.advancecareplanning.org.au/docs/default-source/acpa-resource-library/acpa-publications/advance-care-planning-in-aged-care-implementation-guide.pdf>)
- the *ELDAC Legal Toolkit Advance Care Directives* resources (<https://www.eldac.com.au/tabid/4961/Default.aspx>)

3. What options are available to Samir and Amali if they remain unsatisfied?

If Samir and/or Amali are unsatisfied after meeting with Sharon they could consider contacting the Aged Care Complaints Commission, a free service for anyone to raise concerns about the quality of care or services delivered at an Australian Government funded aged care facility. A complaint can be made openly, confidentially or anonymously.

For further information visit the *Aged Care Complaints Commission* (<https://www.agedcarequality.gov.au/making-complaint/complaints-process>)

If Sharon considers after the meeting that the incident remains unresolved she could advise her CEO, or seek advice from Redvale's lawyer.

It is likely that the incident involving Samir could be resolved without the involvement of a court or tribunal. In most situations it is rare for the legal system to become involved and conflict can be managed within the aged care setting. Where this is not possible and the dispute relates to medical treatment decision-making or guardianship for a person without capacity, some State and Territory guardianship bodies (e.g. the Public Advocate or Public Guardian) have powers to undertake dispute resolution and/or make decisions for the person. On rare occasions Tribunals and Courts may become involved.

For further information visit the *ELDAC Legal Toolkit Managing Disputes factsheet* (<https://www.eldac.com.au/tabid/5282/Default.aspx>).

Final legal observations

It is possible for the incident involving Samir to be resolved in a timely manner, without further escalation, if Sharon meets with Samir and Amali early and communicates openly with them about the incident. This meeting would allow Samir and Amali to discuss their concerns, and be informed about the steps Redvale will take to ensure optimal care is provided to Samir and other residents in the future.

Meeting with the staff who cared for Samir during the incident and reviewing current practice would enable Sharon to promptly identify systemic issues and areas for improvement at Redvale. These include improving recording, accessibility and awareness of Advance Care Directives and planning documents, and providing education to staff about recognising deterioration, Advance Care Planning, consent to treatment, and other aspects of end of life decision-making. Implementing these improvements would not only assist in preventing future incidents but support delivery of patient-centred care that reflects residents' treatment preferences.