

## Older people, hospital discharge and duty of care

# 03 | Discharge planning and post-discharge obligations

## Information for health professionals

A hospital must take reasonable care when it decides to discharge a patient. The key question is whether the hospital acted reasonably for that specific patient, with that patient's condition and known risks.

The law does not require a hospital to keep every patient until the condition has fully resolved. However, the hospital must not discharge a patient without properly considering the patient's risks and needs.

Before discharge, clinicians should give the patient clear information, involve the patient in the decision, and explain what could go wrong after leaving hospital.

They should also tell the patient when to return or seek urgent care. This is often called safety netting. If the patient still faces a meaningful risk, clinicians should explain that risk clearly and **give the patient a real choice** about staying in hospital or going home.

### WHEN DOES THE HOSPITAL'S DUTY END?

A hospital's duty of care does not last forever. It applies while the hospital-patient relationship exists and when the hospital makes the discharge decision. After discharge, the hospital does not usually have an ongoing duty to supervise or monitor the patient indefinitely.

Courts have warned that an open-ended post-discharge duty creates difficult questions about how long the duty would last and what the hospital must do after the patient leaves.

### At discharge, the hospital must still plan properly.

Proper discharge planning will usually include the following steps:

- (a) give the patient clear medical information and a discharge summary
- (b) hand over care properly to a general practitioner, community service, or other treating provider
- (c) provide any necessary discharge medication
- (d) tell the patient, and where appropriate their carer or substitute decision-maker, about ongoing risks and when to seek further treatment
- (e) arrange or help organise post-discharge referrals when the patient's condition requires them.

A hospital does not usually have to supervise or monitor a patient after discharge. However, the hospital may be liable if it acts negligently at the time of discharge and that negligence causes harm. For example, the hospital should not send a patient home without clear information, necessary medication, or appropriate referrals simply because the patient has chosen to leave.



## CONTRIBUTORY NEGLIGENCE

Under section 24 of the *Civil Liability Act 2003* (Qld), a court can reduce damages for contributory negligence by up to 100%.

If a patient understands a risk, chooses to accept it, and that risk later occurs, the patient's own conduct may reduce or defeat a later damages claim.

## PRACTICAL DISCHARGE CHECKLIST

Before discharging a patient, clinicians should check and record the following points:

- ✓ Assess the patient's current condition, risks, and their views and wishes in relation to the discharge decision.
- ✓ Explain the diagnosis, likely course, warning signs, and any known risks in plain language.
- ✓ Give the patient clear return advice, including when to call an ambulance, attend emergency, or contact a GP.
- ✓ Give written discharge information and check that the patient understands it.
- ✓ Provide or arrange required medication, prescriptions, equipment, and wound care instructions.
- ✓ Confirm who will provide follow-up care and when that follow-up should occur.
- ✓ Send or provide a discharge summary to the GP or next treating provider as soon as practicable.
- ✓ Consider whether the patient needs transport, support at home, interpreter services, carer involvement, or community services.
- ✓ Document the discussion, the patient's decision, any refusal of care, and the safety netting advice given.
- ✓ If the patient leaves against medical advice, explain the risks, offer reasonable alternatives, provide safety netting advice, and record the discussion.

## CASE LAW REFERENCES

- *Hartfield v Calvary Healthcare ACT Ltd* (No 4) [2025] ACTSC 488: The ACT Supreme Court found that a hospital may breach its duty of care if it discharges a patient without adequate advice, safety netting, and a real choice about remaining in hospital where significant risk remains.
- *Hunter and New England Local Health District v McKenna* [2014] HCA 44: The High Court held that a health authority did not owe the alleged duty to protect third parties from harm caused by a discharged mental health patient where that duty conflicted with the statutory mental health scheme.
- *McKenna v Hunter and New England Local Health District* [2013] NSWCA 476: The New South Wales Court of Appeal decision raised issues about discharge duties and third-party risk, but the High Court later overturned the relevant duty finding.
- *Civil Liability Act 2003* (Qld), sections 9, 11, 20, 21, and 24: These provisions address breach of duty, causation, professional standards, doctors' duties to warn, and contributory negligence.



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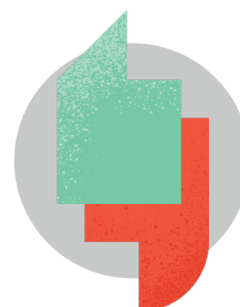
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