CORONERS COURT
OF NEW SOUTH WALES

Inquest:	**Inquest into the death of Kevin Meagher**
Hearing dates:	21 -23 May 2018
Date of findings:	5 July 2018
Place of findings:	State Coroners Court, Glebe
Findings of:	**Deputy State Coroner Teresa O'Sullivan**
Catchwords:	CORONIAL LAW – Cause and manner of death Alcohol toxicity Listerine consumption Death in a mental health facility
File number:	2014/368756

Representation:	Counsel Assisting, Cameron Gardiner, instructed by Jessica Natoli, Crown Solicitor's Office Counsel for Northern Sydney Local Health District, Mr Mark Lynch, instructed by Hicksons Lawyers Counsel for Dr Chiam, Mr Richard Sergi, instructed by Meridian Lawyers Counsel for Ms Madej, Mr Benjamin Bradley instructed by Curwoods Lawyers Solicitor for Ms Hemara and Ms Catalan, Ms Katherine Doust, NSW Nurses and Midwives' Association Solicitor for Ms Schembri and Ms Lee, Mr Matthew Byrne, NSW Nurses and Midwives' Association Solicitor for Ms Whitson, Mr Stephen McAuley, McAuley Hawach Lawyers
Findings:	**Identity of deceased**: The deceased person was Kevin John Meagher. **Date of death**: He died on 15 December 2014. **Place of death**: He died at Macquarie Hospital, North Ryde. **Cause of death:** The medical cause of the death was alcohol toxicity. **Manner of death:** Kevin's death was caused by consumption of a substantial quantity of alcohol. It appears that the source of the alcohol was the mouthwash, Listerine.

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The Coroners Act 2009 (NSW) *in s81(1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death.*

These are the findings of an inquest into the death of Kevin Meagher.

Introduction:

1. Mr Kevin Meagher was born on 26 October 1978 and was 36 years old when he was found deceased on 15 December 2014. At the time of his death, he was an involuntary patient at Bridgeview House, a mental health facility attached to Macquarie Hospital. At about 7am, when nursing staff came to his room to wake him, they found him in his bed and unresponsive. Attempts to revive him were unsuccessful.

The Inquest:

2. Pursuant to s. 81 of the Coroners Act 2009, the coroner holding an inquest touching upon the death of a person is required to make a finding as to whether the person the subject of the inquest died and, if so, findings as to the following:

    a) the identity of the deceased;
    b) the date of death;
    c) the place of death; and
    d) the manner and cause of death.

3. Under s. 82 of the Coroners Act 2009, the coroner holding an inquest also has the power to make recommendations.

4. Kevin's identity and place of death are already known.

5. The autopsy report makes it clear that the cause of death was alcohol toxicity. Toxicological analysis of the post mortem blood sample revealed lethal levels of alcohol and slightly toxic levels of olanzapine.[1]

6. These findings were prepared without the benefit of a transcript.

The Evidence:

Background

7. Kevin was the younger of twin boys. When aged 12 months he was diagnosed with minor cerebral palsy, mainly affecting his right side. He required regular physical, and later speech therapy until early primary school.[2]

[1] Limited Autopsy Report of Dr Liliana Schwartz dated 16 February 2015 at pg. 3, (Volume 1, tab 3 brief of evidence).

8. From the time Kevin started school he required special education due to mild intellectual disability. He attended normal classes with withdrawal for special education. Reading and writing were difficult for him and he repeated years of schooling on two occasions. Notwithstanding those difficulties, Kevin completed his School Certificate at age 18 and continued with TAFE computer courses and part time jobs after leaving school.[3]

9. At the age of 13, Kevin developed a seizure disorder, for which he was medicated and under the care of a neurologist.

10. In 1999, at the age of 20, Kevin's behaviour became increasingly unusual and this eventually led to what his mother describes as a breakdown with acute onset psychosis. In June of 1999 he was admitted to the Cummins Unit at Royal North Shore Hospital as an involuntary patient where he remained for about two months. He was diagnosed with schizoaffective disorder with manic element.[4]

11. Between 1999 and 2004 Kevin's mental health was poor. He did not respond well to treatment and was resistant to taking medication. He had a number of involuntary admissions to hospital during this period.[5]

12. The time between 2004 and 2013 was a lengthy period of stability for Kevin, and he had only a small number of short involuntary admissions. Although he still had some relapses due to his refusal to take medication, and was under the constant care of his community mental health team, he was living independently, managing his own finances, and was actively engaged in artistic pursuits, for which he won awards and had his work exhibited. Kevin also did voluntary work during this period.[6]

13. In early 2014, Kevin became increasingly resistant to taking his medication, and his mental condition deteriorated.[7] He was admitted to the Cummins Unit on 30 April 2014 after the Assertive Outreach Team scheduled him following a period of several weeks of medication non-compliance and a significant deterioration of his mental state.[8] Whilst at the Cummins Unit he continued to refuse to take his medication, necessitating the administration of intramuscular

[2] Statement of Deborah Meagher dated 16 August 2016 (Volume 1, tab 12 brief of evidence).
[3] Statement of Deborah Meagher dated 16 August 2016 (Volume 1, tab 12 brief of evidence).
[4] Statement of Deborah Meagher dated 16 August 2016 (Volume 1, tab 12 brief of evidence).
[5] Statement of Deborah Meagher dated 16 August 2016 (Volume 1, tab 12 brief of evidence).
[6] Statement of Deborah Meagher dated 16 August 2016 (Volume 1, tab 12 brief of evidence).
[7] Statement of Deborah Meagher dated 16 August 2016 (Volume 1, tab 12 brief of evidence).
[8] Report of Dr Ryan Lee to the Mental Health Review Tribunal dated 5 December 2014 (Volume 1, tab 13 brief of evidence).

injections.[9] He was commenced on regular depot antipsychotic medication, but continued to refuse his mood-stabilizing medication.[10]

14. On 20 October 2014, Kevin was transferred to Bridgeview House at Macquarie Hospital as an involuntary patient.[11] On 30 October 2014 he was transferred to the Henley Unit, a secure unit, after becoming agitated and aggressive.[12] Having apparently demonstrated mild improvement, he was transferred back to Bridgeview House on 17 November 2014.[13]

Events leading up to Kevin's death

15. From about 9:30PM on 14 December 2014 until about 7AM on 15 December 2014 two nurses were on duty at Bridgeview House for the night shift –Endorsed Enrolled Nurse Olga Catalan ("EEN Catalan") and Registered Nurse Elsa Lee ("RN Lee"). There were at the time about 18 patients on the ward.

Evidence of Endorsed Enrolled Nurse Catalan

16. EEN Catalan arrived for her shift at about 8:35PM and saw Kevin walking from the toilet back to his room. By the time of observation rounds at 9PM Kevin was back in his room.

17. In her statement EEN Catalan said that it was the usual practice for both nurses to attend the observations rounds together whenever possible. She said one nurse would check patients on one side of the corridor and the other nurse would check patients on the other side of the corridor. EEN Catalan's usual method for conducting observations was to enter the patient's room, get within an arm's reach of their bed, and point the torch towards their back so she could see their active respirations. She said that Kevin usually slept with his clothes on and face down. On the night in question he was wearing a thick jacket. She said she conducted observations of Kevin at the following times: 9pm, 11pm, 12pm and 1am. She said the policy required two-hourly observations, but she sometimes did extra rounds by herself, and the 12 o'clock round was an extra round.

18. At around 1.50am an Aggression Response Team ("ART") was activated at the Parkview Admission Unit ("Parkview") and, as she was part of the ART team, she was required to attend Parkview, which is located around 1 km from Bridgeview House. She remained at Parkview until around 3am and then drove back to Bridgeview House.

[9] Report of Dr Ryan Lee to the Mental Health Review Tribunal dated 5 December 2014 (Volume 1, tab 13 brief of evidence).

[10] Report of Dr Ryan Lee to the Mental Health Review Tribunal dated 5 December 2014 (Volume 1, tab 13 brief of evidence).

[11] Report of Dr Ryan Lee to the Mental Health Review Tribunal dated 5 December 2014 (Volume 1, tab 13 brief of evidence).

[12] Progress note of Hua Yang dated 30 October 2014 at 13.27 (Volume 1, tab 15(b) page 113 of 145).

[13] Progress note of Feng Li dated 17 November 2014 at 15.41 (Volume 1, tab 15(b) page 74 of 145).

19. When EEN Catalan returned to Bridgeview House, she observed a female patient walking in the lounge area in a disturbed mental state. RN Lee told her that the patient had been running into other patients' rooms from the time she had left the unit to attend the ART. EEN Catalan then gave 1 to 1 care to the female patient, in accordance with the recommendation of the ward psychologist. The patient's mental state and behaviour did not improve and she monitored her closely until close to 5am. She said that kind of behaviour was a regular occurrence for the female patient and, when it occurred, she required 1 to 1 care.

20. EEN Catalan said that, at 5am, she conducted an observation round with RN Lee. She said that, on the earlier rounds, it had been easier to see that Kevin was ok, but on the 5am round, it was harder to see his back moving. She said she moved closer to Kevin and stayed longer on that round. She said she was initially not sure whether she was seeing the movement of her hand (holding the torch) or the movement of Kevin's back so she went closer and looked at Kevin's face and checked for movement. She said Kevin's face looked calm and relaxed. She did not see any vomit. She said he did appear to be breathing. She said Nurse Lee had finished the rest of the round on her own by the time she had finished her observation of Kevin, and she estimates she was with him for "minutes". EEN Catalan was asked whether it was possible that Kevin's back wasn't moving, and she replied, "I'm sure he was breathing".

21. EEN Catalan said that, wherever possible, a nurse from the night shift would accompany the day shift nurse on the morning observation round. However she did not participate in the morning round on 15 December 2014 as she was with the disruptive patient.

Evidence of Registered Nurse Lee

22. RN Lee said that, on the night in question, she attended observations of Kevin at 11pm, 1am and 3am. The 11pm and 1am observation rounds were conducted with EEN Catalan, and the 3am round she conducted alone, as EEN Catalan had left the ward to respond to the ART.

23. RN Lee said that the method used to conduct observations was to shine a torch on the patient's chest (or, in Kevin's case, on his back) or on the ceiling and to watch for breathing movements and listen for breathing sounds. She said she never shone the torch on a patient's face as that would wake them and patients had complained to the Nursing Unit Manager ("NUM") about night nurses waking them up in the past.

24. She said that, with respect to patients in double rooms, the nurses would enter the room together and one nurse would check patient A and the other nurse would check patient B. Kevin was in a double room with another patient. RN Lee believes that she checked on Kevin on both the 1am round and the 3am round, but she wasn't sure which nurse checked on him on the 11pm round.

25. With respect to the 1am round, RN Lee said that Kevin was facing down and lying on his stomach, fully clothed. She said she saw him move his head from

the doorway to the window side. She said when she started using her torch, Kevin was already moving his body.

26. In her statement, RN Lee said that at around 2.30am, while EEN Catalan was absent from the ward, *she "escorted a female patient, who had wandered into Mr Meagher's room, back to her own bed."* She said that, at that time, she observed Kevin *"turn his head while lying in bed*". In her oral evidence, RN Lee provided significantly more detail about this incident. She said that this female patient always woke up at midnight and always went into Kevin's room. On this occasion she went into Kevin's room and got into the other male patient's bed. She was making a lot of noise and RN Lee told her *"please come with me, it is inappropriate*" and then turned on the lights. RN Lee said that the other male patient was awake at that point, as was Kevin. She said that Kevin turned his head to see what was happening and RN Lee apologised for waking him. She said Kevin "lifted up his body about 15 degrees to watch". Kevin then turned his head away.

27. In oral evidence, RN Lee said that the female patient went into Kevin's room for a second time at around 3am. She followed her into Kevin's room and escorted her back to her own room. She then conducted a full observation round. She went back into Kevin's room and shone the torch on his back.

28. With respect to the 5am round, RN Lee said that she entered Kevin's room with EEN Catalan and checked the other patient. She said that EEN Catalan stayed longer with Kevin, so she went to check on other patients. She said she then became a bit worried so she returned to see what EEN Catalan was doing. She thought she was away for around 2 minutes before returning to check on EEN Catalan, and estimated that an observation would usually take 10 or 20 seconds. She said when she returned, she met EEN Catalan in the corridor and EEN Catalan told her she had stayed longer in Kevin's room because it was difficult for her to see the breathing, however she had ultimately seen it. She said this conversation was nothing special. She said that, if EEN Catalan had asked her for a second opinion in relation to Kevin, she would have given her one, however no concern was raised.

29. At 5.54am, RN Lee created an electronic progress note on Kevin's medical record, which stated: *"Asleep in bed with breathing on all rounds".* RN Lee's evidence was to the effect that it was in the usual course for one nurse only to author a patient's progress note for the night shift, regardless of whether that nurse had personally conducted all of the observation rounds with respect to that patient.

30. RN Lee said she offered to accompany Registered Nurse Paeroa Hemara ("RN Hemara") on the morning round, however RN Hemara replied that the round had already been done.

The morning of 15 December 2014

31. The morning shift was staffed by Endorsed Enrolled Nurse Margaret Schembri ("EEN Schembri"), RN Hemara and Registered Nurse Xi Wang ("RN Wang").

32. RN Hemara was the first to arrive at about 6:40AM. She states that she went for a walk around the unit prior to the commencement of the shift and handover. She noticed some liquid on the floor of room 32. Seeking to avoid a possible slip, she cleaned the liquid with a towel. While in the room she did not make any observation of Kevin. After putting the towel in the laundry bag she proceeded to the morning handover report.[14]

33. RN Lee recalls speaking to RN Hemara at about 6:40AM and offering to accompany her on the morning rounds. She states that this offer was declined, saying and that RN Hemara said she had already checked on the patients. It should be noted that RN Hemara does not agree that this conversation took place.

34. The morning shift staff received the handover from RN Lee at about 6:50AM. The only issue raised related to the disruptive patient. EEN Catalan also expressed concern that RN Lee had been left alone for a period whilst she had been called away responding to the ART matter.[15]

35. EEN Schembri entered Kevin's room to conduct a wake up call, calling his name a number of times from the doorway. She observed him to be in his usual sleeping position, on his stomach and fully clothed.[16]

36. When Kevin was unresponsive she moved closer observing him to be pale, with vomit around his mouth and on his pillow. She prodded him in the shoulder without response. When EEN Schembri tried to roll him onto his side she noted he was quite stiff and she was unable to open his jaw to clear his airway.[17]

37. EEN Schembri raised the alarm with the other nurses on duty. When RN Hemara arrived in the room she assisted EEN Schembri turn Kevin onto his back. She noticed yellow/brown fluid coming from his mouth and he was cold to touch.[18]

38. RN Hemara then attended the nurse's office and dialled the emergency number 33. Having dialled twice she received no answer. She also received no answer dialling the after hours duty manager. She then activated her duress alarm before returning to assist EEN Schembri in Kevin's room.[19] RN Wang brought in the emergency trolley and oxygen cylinder, alerted the after hours nurse manager and activated the Clinical Emergency Response Team via the Ascom Duress System.[20]

39. The nurses performed CPR until the emergency support team and duty medical officer Dr Myles Gutkin arrived. Dr Gutkin's immediate impression after

[14] Statement of Paeroa Hemara dated 28 April 2018 (Volume 3, tab 26 brief of evidence).
[15] Statement of Margaret Schembri dated 3 August 2017 (Volume 2, tab 19 brief of evidence).
[16] Statement of Margaret Schembri dated 3 August 2017 (Volume 2, tab 19 brief of evidence).
[17] Statement of Margaret Schembri dated 3 August 2017 (Volume 2, tab 19 brief of evidence).
[18] Statement of Paeroa Hemara dated 28 April 2018 (Volume 3, tab 26 brief of evidence).
[19] Statement of Paeroa Hemara dated 28 April 2018 (Volume 3, tab 26 brief of evidence).
[20] Statement of Xi Wang dated 29 March 2018 (Volume 2, tab 22 brief of evidence).

examining Kevin was that he had been dead for some time and that resuscitation was unlikely to be of benefit. He observed that Kevin was "cold, blue and rigid" with a "fixed flexure of his upper limbs," and stated, "my impression at the time, was that this represented rigor mortis".[21] He did, however, note that he had not previously examined a body with rigor mortis,[22] and he accepted during his oral evidence that the views expressed by pathologist Dr Liliana Schwartz on the subject were likely to be based on greater expertise than his own. Dr Gutkin said that the option of declaring death was discussed but there was agreement that resuscitation attempts should be continued even if the chances of success were remote.[23]

40. Ambulance officers attended about 10 or 15 minutes later and took over the resuscitation attempts, however this was discontinued a short time later.

Investigation

41. Constable Blaine Glawson and Senior Constable Adam Leahey responded to the call for police attendance at the scene. They arrived at about 8:40AM. They were shown to Kevin's room by the NUM Bozena Madej and EEN Schembri.

42. Constable Glawson spoke at the scene with Dr Toon Kim Chiam, Kevin's treating psychiatrist. Dr Chiam advised of Kevin's diagnosis and circumstances as an involuntary patient.

43. Constable Glawson recorded in a contemporaneous note that Kevin, *"drinks mouthwash 'often.'"*

44. An empty bottle of Listerine mouthwash was observed in Kevin's wardrobe and photographed, but not recovered.

Autopsy and Toxicology

45. A limited autopsy was conducted on 16 December 2014 by Dr Liliana Schwartz. The direct cause of death was determined to be alcohol toxicity. The post mortem blood sample showed lethal levels of alcohol, namely 0.454g/100mL. The analysis of urine showed a very high alcohol level, lower than that in the blood, suggesting Kevin died during the absorptive phase of alcohol metabolism. The post mortem blood sample also showed slightly toxic levels of olanzapine.

46. When considering the observations made by other witnesses, Dr Schwartz considered whether the presence of the signs of rigor mortis could assist in determining a time of death. It was noted that rigor usually appeared 2 to 4 hours after death, fully develops in 6 to 12 hours, and disappears in 36 hours.

[21] Annexure to Statement of Myles Gutkin dated 29 March 2018 (Volume 2, tab 23 brief of evidence).
[22] Statement of Myles Gutkin dated 29 March 2018 (Volume 2, tab 23 brief of evidence).
[23] Statement of Myles Gutkin dated 29 March 2018 (Volume 2, tab 23 brief of evidence).

However, given the unknown variables it was not possible to reliably postulate a time of death in the present circumstances.[24]

47. Forensic pharmacologist John Farrar considered the circumstances of Kevin's death and opined, inter alia, the following:[25]
    - That Kevin's death was caused by rapid consumption of a substantial quantity of alcohol;
    - Given Kevin's body size, there would have been sufficient alcohol in a 1L bottle of Listerine mouthwash (21% alcohol) to have produced the blood-alcohol concentration of 0.454g/100 mL, however this could only have been achieved by rapid consumption of the contents of the bottle;
    - It is probable that death would have occurred within 30 minutes of consumption;
    - The post-mortem blood sample contains an unusually high concentration of olanzapine for a dose of 20 mg/day. As Kevin consumed olanzapine at night and the peak blood-olanzapine concentration occurs approximately 5 hours after oral consumption, it is possible that his blood olanzapine concentration was near maximal at the time of his death;
    - The large inter-individual variability in blood-olanzapine concentration may also be a cause of Kevin's elevated blood olanzapine concentration;
    - The respiratory depressant effects of olanzapine may have contributed to alcohol induced respiratory depression, however there is otherwise no evidence of olanzapine toxicity per se.

48. In oral evidence, Mr Farrar said that all of the published literature indicates that Kevin's death would have occurred within 30 minutes of consuming the alcohol. He agreed that Kevin would have had to consume the whole bottle of Listerine rapidly, within a matter of minutes. However he then clarified that he had used an average value in undertaking the calculation and said, "It may be that Kevin was more susceptible to this happening. There is a lot of variation in the population re total body water. I have used an average". Counsel assisting asked Mr Farrar whether, if that volume had been consumed at a slower rate, it wouldn't have achieved the volume of alcohol concentration, and he replied, "yes. It would have been metabolised more. And it would have been more evenly distributed within his total body water."

49. With respect to the levels of olanzapine, Mr Farrar said, "one must be wary of post mortem drug concentrations of drugs such as olanzapine. Post-mortem concentrations may be significantly higher than the concentrations ante mortem." He said it was possible that, ante mortem, the olanzapine may have been well within the therapeutic range, even though post mortem it was significantly elevated.

[24] Supplementary Report of Dr Liliana Schwartz dated 18 April 2018 (Volume 3, tab 25 brief of evidence).
[25] Report of John Farrar dated 9 October 2017 (Volume 2, tab 20 brief of evidence).

50. Mr Farrar said that, in contrast, alcohol does not work the same way, and that "post mortem redistribution of alcohol was almost certainly not significant in this case".

Findings in relation to the circumstances of death

51. The autopsy result makes clear that the physiological cause of Kevin's death was alcohol toxicity. The only evidence suggesting a source of alcohol which Kevin had access to around the time of his death points to that source being Listerine mouthwash.
52. The level of alcohol found in Kevin's body can be explained by rapid consumption of a full 1L bottle of 21% alcohol Listerine. It would appear on the evidence that his level of alcohol toxicity cannot be explained by consumption of either a lesser quantity of Listerine, consumption of the same quantity of lower alcohol content Listerine, or consumption of Listerine more gradually over a longer period of time.

53. I note that what effect (if any) Kevin's Hashimoto Thyroiditis may have had on the way his body metabolised alcohol was not explored in evidence and remains unknown.

54. There is no direct evidence of Kevin consuming any Listerine on the evening of 14 December 2014 or early morning of 15 December 2014. It is consequently difficult for me to make any finding as to the exact circumstances of its consumption.

55. Similarly, it is difficult for me to come to any firm conclusion as to the exact time when Kevin consumed the Listerine, and hence when he died. I am assisted on that point by the following evidence:
    - Kevin was found deceased at 7AM;
    - Kevin was last seen up and about around 8.35PM;
    - Kevin had been observed by nursing staff at two hourly intervals throughout the night; and
    - The consumption of Listerine was likely to be rapid, and death probably occurred within 30 minutes of consumption.

56. When Kevin was found unresponsive at 7AM his body exhibited signs of rigor mortis. Whilst this might suggest that Kevin had been deceased for some time, I accept the expert opinion of Dr Schwartz that "it is difficult if not impossible to determine the time of death based on the presence of rigor mortis".

57. When Kevin was observed by RN Lee at around 2.30AM she observed him to turn his head and lift his body in response to the disruption in the room at the time. This would suggest unequivocal signs of life at that time. I accept the evidence of RN Lee that Kevin was alive at 2.30AM.

58. Observation of Kevin was more difficult at 5AM. EEN Catalan took much longer than would be usual to satisfy herself that Kevin was breathing. It is noted that observing Kevin sleeping was difficult given his preference to sleep face down,

fully clothed, and at this time wearing a heavy jacket. However, these were the circumstances present when he was observed earlier in the night also.

59. Taken as a whole, there are tensions in each aspect of the evidence which cannot be readily resolved. Having accepted that Kevin was alive at 2:30AM, and being guided by Mr Farrar's opinion that consumption of Listerine preceded death by probably 30 minutes, it is therefore highly unlikely that Kevin consumed the Listerine prior to going to bed sometime between 8.35PM (when he was last seen up) and 11PM (when he was checked and apparently sleeping).

60. If it were the case that Kevin roused any time after he was last checked at 5AM and consumed the Listerine then, the onset of rigor mortis would appear to be particularly swift such as to present as he did when found at 7AM. I note however Dr Schwartz's evidence as to the unreliability of using rigor to calculate time of death and furthermore that rigor can begin within minutes in warmer weather. Whilst I do not have any evidence before me as to the weather conditions which prevailed, it was December and Kevin had been sleeping fully clothed with a heavy jacket.

61. Alternatively, Kevin may have consumed the Listerine at around the time his sleep was disturbed at 2.30AM. This hypothesis has some logic to it. The time of the disturbance in Kevin's room might be a likely time he would get up during the night, and was a time when only one nurse was on duty on the ward. The difficulties making observations of Kevin at 5AM could be explained if it were the case that his consumption of Listerine was either taking its effect, or had already done so.

62. Notwithstanding, I am not able to come to a firm conclusion as to when during the early hours of 15 December 2014 Kevin consumed Listerine and consequently when precisely he died.

Knowledge of Kevin's use of Listerine

63. Attempts were made during the inquest to ascertain what was known of Kevin's use of Listerine and whether more should or could have been done to keep Kevin safe.

64. A progress note written by Evan Brian Thwaites on 20 August 2014, while Kevin was a patient at the Cummins Unit, notes that Kevin told him, "*I can drink my gurgle*". Mr Thwaites noted that the "gurgle" to which Kevin was referring was Listerine mouthwash. He also noted that Listerine mouthwash is "*gargle only not for drinking*" and that the packaging of Listerine contains instructions to "*expel the liquid*".[26]

65. A further progress note, written four days later by Mina Khatami, notes that Kevin is "*obsses (sic) about mouth wash and gargling liquid*."[27]

[26] Progress Note of Evan Brian Thwaites dated 20 August 2014 (Volume 1, tab 14(c), page 1).
[27] Progress note of Mina Khatami dated 24 August 2014 at 12.12 (Volume 1, tab 14(c) page 11 of 103).

66. In a progress note written by Kirralee Hall three days later on 27 August 2014, Ms Hall recorded that Kevin's "*poor self-care*" had been noted in the "MDT Meeting" (presumably Multidisciplinary Team Meeting), that she therefore prompted a discussion with Kevin about his self-care, and that Kevin reported that "*he brushes his teeth daily (with Listerine)…"*[28]

67. In her statement, Kevin's mother, Ms Deborah Meagher, states that:

> *"I was aware that due to Kevin's schizoaffective disorder, he developed a delusion that he was allergic to toothpaste and he would gargle Listerine mouthwash. I did not ever see Kevin use the Listerine however sometime during Kevin's stay at the Cummins Unit, we had an argument over him not brushing his teeth in a traditional manner and that he would gargle the Listerine and then swallow it. I told Kevin he shouldn't swallow the Listerine. I did not think it was of any concern and therefore I did not report it to staff".* [29]

68. On the day of Kevin's transfer to Bridgeview House, Endorsed Enrolled Nurse Margaret Schembri (EEN Schembri) made the following entry in the electronic progress notes:

> *"Pt has been getting leave at RNSH. Kevin wanted to purchase Listerine and was fixated on same. Despite being on an open ward he has not breached the rules and did not go to the shops."*[30]

69. In her statement, EEN Schembri gives evidence as to the context in which the above progress note was written and her recollections as to what she was thinking when she wrote it. She states as follows:

> *"Regarding my entry in Mr Meagher's EMR on 20 October 2014 at 23.14 hours…By the time I typed my nursing entry, I would have had approximately two hours with Kevin. I have no recollection of any risks associated with Listerine at the time of Kevin's admission…When I used the word fixated in my entry in the EMR on 20 October 2014, I mean he was constantly demanding or fixated on leaving the ward to go to the shops and he expressed the need to buy Listerine. This is a usual quandary that faces patients who come from a locked ward to an open ward. On a locked ward, sometimes patients are getting unescorted leave to go to the shops. Subsequently, they come to an open ward and they are told they cannot leave…Many new patients to open wards challenge nursing staff on this issue. Kevin wanting to buy Listerine in my experience was not a significant issue. People with a physical disability often require modified methods and adaptations to attend to their activities of daily living such as cleaning their*

[28] Progress note of Kirralee Hall dated 27 August 2014 at 17.02 (Volume 1, tab 14(c) page 31 of 103).
[29] Statement of Deborah Meagher dated 16 August 2016, (volume 1, tab 11 brief of evidence).
[30] Progress note of Margaret Schembri dated 20 October 2014 at 23:14 (Volume 1, tab 15(b) page 142 of 145).

teeth and washing. For example, I have written in the clinical notes that I helped Kevin with obtaining foaming soap in a cup to assist him to wash…This was my first meeting with Kevin and I did not feel his want for Listerine was out of the ordinary for a person with cerebral palsy who had one hand that did not have fine motor coordination".

70. EEN Schembri was also asked about that progress note during the hearing, and her oral evidence was consistent with that in her statement. She said she understood Kevin had been getting unescorted leave at the Cummins Unit and that, upon arriving at Bridgeview House, he had been told he couldn't have leave. She said that, in that context, she did not so much believe Kevin was fixated on Listerine, but rather assumed that he was fixated on getting leave to go to the shops.[31] EEN Schembri said that she had not thought it problematic that Kevin wished to obtain Listerine, as she was aware that Kevin had some issues with one of his arms due to his cerebral palsy (which made it more difficult for him to brush his teeth) and she had viewed the Listerine as assisting Kevin with his oral hygiene.[32]

71. On 4 November 2014, after Kevin had been transferred to the secure Henley Unit, Registered Nurse Veronica Jarocki (RN Jarocki) made the following progress note:

"A bottle of Listerine was found in his room that Kevin referred to as 'his wine'. Bottle removed and placed in nurse's station".

72. RN Jarocki provided a statement dated 25 February 2016, in which she stated that, on 4 November 2014, she was in Kevin's room giving him some milk and food, when she observed the bottle of Listerine. She stated that the Henley Unit is a ward for patients who suffer from mental illness and drug and alcohol problems and that there is a policy that alcohol and alcohol-based products are not permitted on the unit. She stated that she removed the bottle of Listerine from Kevin's room on the basis of that policy, as she would have done for any other patient in the Henley Unit. She does not believe she ever saw Kevin consuming Listerine.[33]

73. RN Jarocki gave evidence in the inquest. She said, relevantly, that the bottle of Listerine she removed from Kevin's possession was unopened. She also said that she had not been searching Kevin's room at the time she located the Listerine and accordingly the bottle must have been in plain view. She said that she did not check whether the Listerine was an alcoholic or non-alcoholic product, and clarified that patients in the Henley Unit are not permitted to have any form of mouthwash at all. She stated that this was her first and only interaction with Kevin and that she removed the bottle of Listerine from his possession purely on the basis of the policy about mouthwash.[34] She said she

[31] Oral evidence, 21 May 2018
[32] Oral evidence, 21 May 2018
[33] Statement of Veronica Maria Jarocki dated 25 February 2016, paragraphs 6-8 (volume 1, tab 9 brief of evidence).
[34] Oral evidence, 22 May 2018

had written the note because, although she did not know Kevin well, she knew he was unwell and suffering from delusions and thought the "wine" comment was a suspicious thing to say. She wrote it in the progress note so that his treating team could consider it.[35]

74. RN Jarocki stated that she had known alcoholics and teenagers to consume mouthwash for its alcohol content, however she does not recall any particular patients at the Henley Unit having that issue.[36]

75. On 26 November 2014, after Kevin had been transferred back to Bridgeview House, Occupational Therapist Verity Whitson conducted a community access/safety assessment with Kevin for the purpose of determining his suitability for unescorted shop leave. Ms Whitson recorded the following in a progress note of the same date:

> *"Kevin was very eager to attend assessment as he wanted to purchase some items at the supermarket…Kevin walked quickly to the supermarket…Kevin wanted to purchase some seasoning for his salads and chose a large size bottle of seasoning…Kevin also purchased a large bottle of Listerine."*[37]

76. In her statement, Ms Whitson notes that for the purpose of undertaking her assessment, she accompanied Kevin to the Cox's Road shops, North Ryde, which are located a five minute walk from Macquarie Hospital.[38] She does not recall what notes she reviewed prior to conducting the assessment, but believes she would have looked at recent notes indicating Kevin's risk status and would have discussed with ward staff any pertinent risks prior to escorting Kevin to the shops.[39] She does not recall there being any alerts on Kevin's file indicating any risks relevant to the assessment she was about to undertake.[40] Ms Whitson states that, due to the passage of time, she does not actually recall observing Kevin purchase the Listerine.[41] She does not recall having any reason to think the purchase of Listerine would be dangerous.[42]

77. Ms Whitson's oral evidence did not add anything to the evidence set out above.

78. EEN Catalan did not mention Listerine in her statement or oral evidence.

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[35] Oral evidence, 22 May 2018
[36] Oral evidence, 22 May 2018
[37] Progress note of Verity Whitson dated 26 November 2014 at 11.21 (Volume 1, tab 15(b) page 54 of 145).
[38] Statement of Verity Whitson dated 26 March 2018, paragraphs 29-30 (volume 2, tab 21 brief of evidence).
[39] Statement of Verity Whitson dated 26 March 2018, paragraphs 59-61 (volume 2, tab 21 brief of evidence).
[40] Statement of Verity Whitson dated 26 March 2018, paragraph 62 (volume 2, tab 21 brief of evidence).
[41] Statement of Verity Whitson dated 26 March 2018, paragraph 35 (volume 2, tab 21 brief of evidence).
[42] Statement of Verity Whitson dated 26 March 2018, paragraph 36 (volume 2, tab 21 brief of evidence).

79. RN Lee gave oral evidence that she had never seen Kevin use mouthwash and had never seen any bottles of mouthwash in his room with his belongings.[43]

80. RN Wang's oral evidence was that, if she had noticed that a patient was drinking mouthwash, she would have reported it to the doctor and the clinical team. She said she would report it to the NUM, the psychiatrist, "everyone would be informed".[44]

81. In her statement, Constable Glawson's says that, upon arrival at Bridgeview, she spoke with NUM Madej and EEN Schembri near the nurse's office. She states that both nurses showed her and Senior Constable Leahey into the hallway leading to Kevin's room. She also states that she spoke with Dr Chiam, NUM Madej and EEN Schembri to obtain information about Kevin that day. An entry Constable Glawson made in her official police notebook on 15 December 2014 indicates that Constable Glawson also spoke with Nurse Paeroa Hemara while at Bridgeview House that day.

82. While at Bridgeview House on 15 December 2014, in addition to making notes in her official police notebook, Constable Glawson made contemporaneous handwritten notes on a P79A Report of Death to the Coroner form. In the section of the form headed "Narrative of circumstances under which death took place", Constable Glawson wrote, near the top of that section, "drinks mouthwash 'often'" . The source of that information is not specified in the contemporaneous note and was a subject of contention during the inquest.

83. In her statement dated 27 January 2015 and witnessed on 23 June 2015, Constable Glawson states that, when she attended Bridgeview House on 15 December 2014, Dr Chiam:

> *"…continued to explain characteristics of the deceased by stating to me that he is known to often consume amounts of 'Listerine' mouthwash. Dr Chiam stated that in the deceased's room on a shelf in the wardrobe was an empty bottle of mouthwash. I later observed an empty bottle of Listerine mouthwash in the deceased's wardrobe and is (sic) depicted in a scene photograph".*

84. In Dr Chiam's statement, dated 12 October 2015, he states that, "in relation to personal hygiene MEAGHER sometimes would insist on brushing his teeth with peanut butter. His Listerine was not seen as dangerous but an assistant to MEAGHER'S personal care." Dr Chiam's statement also refers to the progress notes of EEN Schembri and RN Jarocki concerning Listerine (set out above, although the date of RN Jarocki's progress note provided in the statement is incorrect). It is not specified in the statement whether Dr Chiam first became aware of those progress notes before or after Kevin's death. Dr Chiam then states,

> *"To the best of my knowledge, other than previously stated occasions, it was not noticed by staff or myself that MEAGHER may have been consuming*

[43] Oral evidence, 22 May 2018.
[44] Oral evidence, 21 May 2018

Listerine. Therefore it was not known if the consumption of Listerine was a pattern or may have been regularly used, as it was not noted any large quantity purchases or empty bottles in his possession".

85. In his supplementary statement dated 13 July 2017, Dr Chiam states that he has now read Constable Glawson's statement which attributes various comments to him. He states he is confident that he did not tell Constable Glawson on 15 December 2014 that Kevin was "known to often consume amounts of Listerine mouthwash". He also states that he did not say various other things attributed to him by Constable Glawson in her statement". He states that he had never seen Kevin consume mouthwash and, to his knowledge, no staff member had knowledge prior to Kevin's death that he had a propensity to ingest mouthwash.

86. Attached to his supplementary statement is an email chain between Constable Glawson and Dr Chiam containing emails sent between 3 September 2015 and 8 October 2015. In the email chain, Constable Glawson conveyed to Dr Chiam that obtaining a statement from him was at that point a matter of urgency. Constable Glawson also put Dr Chiam on notice that "[t]he Coroner requires a statement from you in relation to the Mr MEAGHER and the Listerine…"

87. Dr Chiam states that Constable Glawson attended the hospital to take his statement on 12 October 2015 1-2 hours earlier than the time he had specified he would be available, that the interview took place in the interview room which did not contain a computer, that he accordingly could not access Kevin's progress notes which were electronic, and that he did not believe Constable Glawson showed him a copy of the progress notes during the interview. He states that, before he reviewed the toxicology report, he had no personal knowledge of Kevin having had any interest in Listerine or having ingested Listerine.

88. In his supplementary statement Dr Chiam states that, several months after Kevin died, he was informed by "staff" that on 15 December 2014 Constable Glawson inspected Kevin's room with a member of staff and questioned that member of staff about "empty Listerine bottles on the floor" and whether the staff member considered that to be suspicious. Dr Chiam further states that he believed the staff member told Constable Glawson that Kevin often used Listerine but had no known history of substance abuse.

89. During her oral evidence, Constable Glawson stated that there was only one Listerine bottle in Kevin's room on 15 December 2014 and that nothing in the room was moved prior to the photographs being taken.

90. During her oral evidence, Constable Glawson said that the person who had told her that Kevin "drinks mouthwash 'often'" at the scene was Dr Chiam and that he told her that in the office area. She said that, to the best of her recollection, the conversation took place before Senior Constable Leahey took the photograph of the wardrobe containing the empty Listerine bottle. She said she left the room straight away to tell Senior Constable Leahey about the Listerine as she thought

it was unusual. She acknowledged that the typed P79A that was submitted to the Coroner did not include any reference to Kevin drinking Listerine and said that was because, although she thought it odd, she did not believe at the time that it was related to Kevin's cause of death.

91. Constable Glawson accepted that she spoke with a number of practitioners from Bridgeview House on 15 December 2014, that she wrote down various pieces of information on her handwritten P79A form and that she could not now be certain which practitioner provided which pieces of information. She also states that she was given some documents from Kevin's medical record and that some information on her handwritten P79A may have come from that record. Notwithstanding her uncertainty with respect to the source of other information in the handwritten P79A, Constable Glawson was firm in her belief that the information about Kevin drinking mouthwash came from Dr Chiam and she was unshaken in that belief despite being rigorously cross-examined by Dr Chiam's counsel.

92. In Dr Chiam's oral evidence, he acknowledged that his first statement contained references to the progress notes concerning Listerine made by EEN Schembri and RN Jarocki, however he said he wasn't sure whether he had a copy of those notes with him during his interview with Constable Glawson on 12 October 2015 or not. He stated that he was not expecting Constable Glawson to attend the hospital when she did, and that he was about to start a Multidisciplinary Team Meeting at the time. He said that, regardless, he felt somewhat compelled to participate in the interview with Constable Glawson as best he could. He said that he asked his registrar to run the meeting, went to the medical records department to obtain some records, and then went to meet Constable Glawson. He stated that he brought with him to the interview some hard copy medical records, however the progress notes were electronically stored and he did not have access to a computer in the interview room. He stated that he isn't sure whether he was given a copy of the progress notes during the interview, whether Constable Glawson had her own copy of the progress notes during the interview, or whether Constable Glawson mentioned the progress notes to him during the interview. This is inconsistent with his supplementary statement, in which he said that he did not have access to the progress notes during the interview on 12 October 2015.

93. Dr Chiam stated that he definitely read those progress notes after Kevin died and that he may have read them prior to Kevin's death but he was not sure about that. He stated that his general practice was to try to review a patient's notes before seeing the patient (and also whenever it became necessary) and that he saw Kevin around once per week. However he said his practice was to prioritise the medical notes written by his registrar, and to skim the other notes. Dr Chiam said that, if he had read RN Jarocki's note about Listerine being Kevin's "wine" he thought it would have raised concerns as to whether Kevin had an issue with alcohol and he believes if he had become aware of the note he would have been more vigilant as to whether Kevin had an alcohol problem.

94. Dr Chiam said that in all his interactions with Kevin, nothing had ever arisen in relation to use of Listerine. He also said that no member of staff had ever raised

with him Kevin's use of Listerine as a matter of concern. I understand Dr Chiam to have meant that no staff member raised Listerine with him as a concern while Kevin was alive.

95. Dr Chiam said that he definitely did not tell Constable Glawson on 15 December 2014 that Kevin "drinks mouthwash often". He said he also did not tell Constable Glawson that there was an empty bottle of mouthwash in Kevin's room. He said that, although Constable Glawson suggests in paragraph [15] of her statement that he had explained Kevin's medications to her, she then goes on to incorrectly state that Kevin was regularly taking the medications listed when in fact he was not taking all of those medications regularly. Constable Glawson also incorrectly stated that Kevin's Benzotropine was for epilepsy.

96. In respect of paragraph [17] of his supplementary statement, Dr Chiam said he had been told that EEN Schembri had accompanied Constable Glawson to Kevin's room on 15 December 2014 and that, in response to a question asked by Constable Glawson, EEN Schembri had informed Constable Glawson that Kevin often used Listerine but that he had no known history of substance abuse. Dr Chiam said he thought he had been told that information by a social worker, but was not sure, and that this conversation occurred after the toxicology result came back and everyone was extremely baffled by it. He said this was the first time he became aware of Listerine being involved as a potential cause of death. He said he may have been told the information in a multidisciplinary team meeting, but wasn't sure.

97. I note that Constable Glawson said in her oral evidence that "Bo and Margaret" entered Kevin's room with her on 15 December 2015.

98. I also note that EEN Schembri stated in her oral evidence that she could not recall whether or not she entered Kevin's room with the police officers. She did remember speaking with the officers. However she said that she did not raise Listerine with Constable Glawson on 15 December 2014, did not hear anyone else raise Listerine on 15 December 2014, and that the first she heard of it was much later. She said she couldn't be sure whether she had ever seen Listerine in Kevin's possession, however if she had, it wouldn't have piqued her interest.

99. EEN Schembri said that she had had previous experience, back in the day, of patients being admitted to a locked unit under the Inebriates Act, and that those patients would sometimes try to legitimise their alcohol use by using an alcoholic mouthwash. EEN Schembri said she had never known that to be an issue on an open ward, and that if Kevin had had known issues with alcohol, he would not have been placed at Bridgeview House, which is an open ward with a bottle shop located five minutes away.

100. NUM Madej stated in her oral evidence that she had never personally observed Kevin use Listerine and that nothing had ever been reported to her about Kevin's use of Listerine. She was asked when it was conveyed to her that Listerine was apparently a factor in Kevin's death. She replied that nursing staff advised her on the day of Kevin's death that an empty bottle of Listerine had been found in Kevin's room and she believed it was Margaret Schembri who conveyed that

information to her. She said she remembered Margaret Schembri telling her, about half an hour after Kevin was found, that Listerine was found in Kevin's room and that Listerine contains alcohol. She said she thought it was strange that this would leap out as an issue, because Bridgeview was not a drug and alcohol unit. NUM Madej said she did not recall discussing Listerine with the police that day. She said she was "in and out" of Kevin's room the whole time the police were there, as she was there to assist them with whatever they might need.

101. Nurse Hemara said in oral evidence that she did not speak with police on the morning of 15 December 2014. She said she had no awareness prior to Kevin's death that he used Listerine.

102. It is clear from the evidence that Kevin's use of Listerine had attracted the attention of some of those who cared for him. In some cases there was a suggestion or inference that Kevin swallowed or drank Listerine, however there is no direct evidence of him using mouthwash as a beverage.

103. What is equally clear is that no one treating or caring for Kevin saw his use of Listerine as problematic. This view had solid foundation. Firstly, Kevin had no history of problems with alcohol, such that alcoholic mouthwash might be viewed as a surreptitious means by which to feed an addiction. Secondly, Kevin had difficulties maintaining personal hygiene by himself, owing to aspects of both physical disability as well as his mental illness by which use of mouthwash could rightly be seen as positive. Thirdly, it appears that the experience of each staff member who had some contact with Kevin's interest in Listerine was relatively limited. That is, each incident noted was not in itself of sufficient gravity to raise concern. Finally, behaviour which might otherwise been seen as unusual would not necessarily be seen as such when viewed in the context of the manifestations of Kevin's mental illness.

104. That said, it would appear that someone was of the view from a very early stage that Kevin's interest in Listerine may have contributed to his death. Constable Glawson's note "drinks mouthwash often" is made at an early stage in her enquiries and stands out as a point of interest.

105. Constable Glawson was firm in her evidence that the source of the comment was Dr Chiam. Dr Chiam was equally firm in his denial. Ultimately, I am not able to resolve this conflict on the evidence.

106. I have heard evidence from a number of other staff members who were present during the initial police investigation and potentially the source of the comment Constable Glawson has recorded. Each has denied making the comment and no further light is shed upon who it may have been. Consequently I am not able to make any finding as to the comment's source.

Evidence as to Frequency of Aggression Response Teams during Night Shift

107. The policy with respect to Aggression Response Teams ("ARTs") as at the relevant date is behind tab 40 of the brief of evidence. The policy provides that an ART comprises the After Hours Nurse Manager, the Duty Medical Officer, a Security Officer and one nurse from each of the Henley Unit, Bridgeview House, Tarban, The Cottages, Manning, Hamilton and Lavender.[45] The nursing staff delegated to the ART for all shifts, including night duty, is allocated the previous day by the After Hours Nurse Manager.[46]

108. Mark Joyce, the Director of Nursing, Mental Health Drug and Alcohol at the North Sydney Local Health District, agreed in oral evidence that, pursuant to the policy, when an ART is activated, the nursing staff delegated to the ART would be called away from their units.[47] He was asked how often an ART is required and replied that in 2017 the number of ARTs activated during the night shift was "single digit figures". He gave evidence that, as at the date he gave evidence, there had not been any ARTs activated during the night shift so far in 2018. He agreed that the activation of an ART is a relatively rare event (presumably on the night shift).[48]

Changes to Nursing Workforce since Kevin's death

109. A staffing review of the nursing workforce at Macquarie Hospital was conducted by Ms Jenny Neilsen, Nurse Manager, Operations, Northern Sydney Local Health District, in April 2016, following a number of workplace complaints.[49] Ms Neilsen's report, dated 26 July 2016, is behind tab 2I of Mr Joyce's statement. Mr Joyce was taken to page 6 of that report, and agreed that the table at paragraph 5.3 listed all the mental health units at Macquarie Hospital and the staffing levels on each shift. He agreed that the column headed "ND" referred to the night shift, and that the table showed that all units other than Lavender House had only two nurses rostered on for the night shift.[50] He agreed that, if one of those two nurses needed to respond to an ART, that would inevitably leave one staff member only on duty.[51]

110. Mr Joyce agreed that Ms Neilsen's report had raised concerns about the number of staff on night shift.[52] Specifically, Ms Neilsen stated:

> "Staffing levels in all Units except Lavender House is at a concerning level on night duty. Due to additional duties at night and from a Work, Health & Safety perspective and in accordance to the NHPPD, staffing levels should be at least three on nights in all units".[53]

[45] PR2009_252, at 4.2 (Volume 3, tab 40).
[46] PR2009_252, at 4.4 (Volume 3, tab 40).
[47] Oral evidence 23 May 2018
[48] Oral evidence 23 May 2018
[49] Macquarie Hospital Staffing Review by Jenny Neilsen dated 26 July 2016 (Volume 3, tab 27.2I).
[50] Oral evidence 23 May 2018
[51] Oral evidence 23 May 2018
[52] Oral evidence 23 May 2018
[53] Macquarie Hospital Staffing Review by Jenny Neilsen dated 26 July 2016, pg 9 (Volume 3, tab 27.2I).

111. Mr Joyce said that the Local Health District had sought approval to progress to three nurses per shift on night duty. As I understood his evidence, he said that a staggered process of recruitment would commence in July 2018 and that ultimately across all units listed in Ms Neilsen's report, there would be 3 nurses on the night shift.[54]

Changes to Policy re Nursing Observations since Kevin's Death

112. As I understood the oral evidence of Mr Joyce, the practice with respect to nursing observations at Bridgeview House as at 14 –15 December 2014, was set out in a document titled, "Mental Health Nursing Observation Chart Level 3 & 4." That document appears a number of times in the brief of evidence,[55] and it sets out the management requirements, including the nature and frequency of nursing observations required, for patients within each of the four "care levels". That document references the *NSW Health Suicide Risk Assessment and Management Protocols Mental Health In-Patient Unit,* a guideline issued by NSW Health in 2004.[56]

113. Kevin's medical records show that, after being transferred from the Henley Unit back to Bridgeview House on 17 November 2014, he was assessed as requiring level 4 care.[57] The management requirements for patients assessed as requiring level 4 care included that they be checked "every 2 hours, at meal times and at change of shift".[58] Unlike patients assessed as requiring level 1 or level 2 care, there was no requirement that patients be checked for signs of life (e.g respiration) throughout the night.[59]

114. As I understood Mr Joyce's evidence, the current policy with respect to nursing observations is attachment 20 of the statement of Ms Maureen Fechter, who is the Service Director, Macquarie Hospital, Mental Health Drug and Alcohol.[60] That policy currently applies to Bridgeview House.[61] It provides that "a minimum of hourly night observations must be conducted overnight in all inpatient units…night observations must include checking patients for signs of life (e.g spontaneous respirations) with appropriate documentation…patients on level 4 night observations are checked every hour".[62]

[54] Macquarie Hospital Staffing Review by Jenny Neilsen dated 26 July 2016, pg 9 (Volume 3, tab 27.2I).
[55] See for example Volume 1, tab 15(c), page 57-58, 59-60, 61-62.
[56] Located in Volume 2, tab 28 of the brief of evidence, at p. 11; Mr Joyce said in oral evidence that this document was in the nature of a guideline, 23 May 2018.
[57] Progress note of Ryan Lee dated 18 November 2014 at 12.04 (Volume 1, tab 15(b) page 72 of 145); Progress note of Ryan Lee dated 20 November 2014 at 12.09 (Volume 1, tab 15(b) page 67 of 145); Progress note of Ryan Lee dated 26 November 2014 at 10.53 (Volume 1, tab 15(b) page 55 of 145).
[58] See for example Volume 1, tab 15(c), page 57-58, 59-60, 61-62.
[59] See for example Volume 1, tab 15(c), page 57-58, 59-60, 61-62.
[60] Oral evidence 23 May 2018; PR2008_043 (volume 2, tab 24.20).
[61] Oral evidence 23 May 2018
[62] PR2008_043 at pg. 7 (volume 2, tab 24.20).

115. Mr Joyce said in his oral evidence that the NSW Ministry of Health had issued a policy directive in 2017, titled "Engagement and Observation in Mental Health Inpatient Units".[63] That policy directive directs what types of observations should occur across all NSW mental health drug and alcohol services, including Bridgeview House. Mr Joyce said that the Northern Sydney Local Health District was in the process of translating that policy directive into an updated version of its local policy. He said the updated local policy is currently before a committee and he is waiting for formal signoff. He said he expected that to occur imminently.[64] He said that a lot of the requirements of the 2017 policy directive have already been implemented on the ground, and that the sign-off of the policy document was more of a formality.[65] Mr Joyce said that the new local policy will keep the current status quo of level 4 patients receiving 1 hourly observations (during the night shift) however a new category of level 5 patients would be introduced.[66]

Was Kevin's placement at Bridgeview House appropriate for his care, treatment and supervision needs?

116. The statement of Maureen Fechter addresses the issue of Kevin's placement. She attaches to her statement information about Bridgeview House and its admission criteria. She notes that:

> *"[p]atients are required by the Mental Health Act to be treated in the least restrictive environment possible. Risk of harm to self, others or reputation need to be balanced against their right to the least restrictive environment. Decisions on transferring patients to a less secure unit are based on the balance of risk versus possible benefits".*[67]

117. Ms Fechter further states that Kevin was not fully transferred to the Henley Unit at any stage, but rather was there as a respite patient. She said that there are no exclusion criteria for return of a respite patient (to Bridgeview House).[68]

118. In a letter of referral written by Dr Sumitra Shankar to the Macquarie Hospital Assessments Team and dated 5 June 2014, Dr Shankar stated:

> *"I am writing to refer Mr Meagher to you for a rehabilitation admission…Usually Mr Meagher copes fairly well with his psychosis, manages his ADLs and has a full program of activities, mainly centred around art. He has had numerous successful exhibitions and recently won a $10,000 grant…Over the last 6-12 months, however, there has been a persistent deterioration in his mental state and ability to cope…We feel that a period of rehabilitation will be necessary to assist him to regain his previous level of functioning, and to make community living safe again. Currently…he is behaviourally settled. He voices objections to medication, but takes them*

[63] Engagement and Observation in Mental Health Inpatient Units (Volume 3, tab 27.7).
[64] Oral evidence 23 May 2018
[65] Oral evidence 23 May 2018
[66] Oral evidence 23 May 2018
[67] See statement of Maureen Fechter, Volume 2, tab 24.
[68] See statement of Maureen Fechter, Volume 2, tab 24.

when administered by nursing staff. He no longer requires an acute inpatient admission, and is clinically ready for transfer should you feel this to be appropriate. He also has a history of thyroid problems, but he has declined to take thyroxine. His endocrinologist and GP are accepting of this, and feel that regular monitoring is all that is necessary currently."[69]

119. In a letter from Veronica Morton, Lower North Shore Community Health, to Rolf Marsden, dated 12 June 2014, Ms Morton stated:

120. *"The AOT has noted a gradual decline in Kevin's ability to function in the community over the last two years and a marked decline over the last 12 months…Since admission Kevin has shown very little improvement to his mental state…prior to the decline…he would regularly participate in Pottery and art groups…It is hoped that an admission to Macquarie hospital for rehab purposes will assist in regaining a functional level of insight and assist with re*-engagement in community groups including his art projects".[70]

121. On 22 September 2014, while Kevin was at the Cummins Unit, Dr Gregory Lysenko reported to the Mental Health Review Tribunal that:

> *"Kevin has been referred to Macquarie Hospital for psychiatric rehabilitation. His assessment for a bed at Macquarie Hospital was unsuccessful owing to the persistent acuity of his psychotic symptoms. The team at Macquarie Hospital wanted for Kevin to demonstrate consistency with his adherence to medications (including sodium valproate/considering depot antipsychotic medication) with demonstrated improvement in mental state prior to being reassessed." Attempts to have Kevin consistently take sodium valproate have failed…*[71]

122. On 9 October 2014, Veronica Morton recorded in a progress note the following:

> *"Transported Kevin…to Bridgeview at Macquarie Hospital for 11am assessment…Bridgeview Consultant discussed his concerns regarding Kevin's medication compliance stating that he would not accept Kevin on the ward without him being on both a Depot and Lithium…Bridgeview team advised that they would discuss the assessment during the clinical meeting on Monday and would advise if other members of the team would like to see Kevin face to face with the assumed date to be the original scheduled date of the 16/10/2014…remaining concerns so far identified medication compliance, Kevin is to be on a mood stabiliser and a depot prior to admission.*[72]

123. On 16/10/2014, a progress note states:

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[69] Referral of Dr Shankar dated 5 June 2014, Volume 1, tab 15(c), pg. 18.
[70] Letter from Veronica Morten to Rolf Marsden dated 12 June 2014 (Volume 1, tab 15(c), pg 3).
[71] MH Report to the Mental Health Review Tribunal of Gregory Lysenko dated 22 September 2014 (Volume 1, tab 14(a), pg. 27 of 170.
[72] MH Community Case Manager Contact progress note of Veronica Morton dated 9 October 2014 (Volume 1, tab 14(b), pg. 23).

"Plan: Pt accepted into Macquarie Hospital Bridgeview unit by Dr Chiam. S/W to liaise with Community mental health team. Pt to arrive before 10am Monday 20/10/2014."[73]

124. Progress notes made by Dr Lee and Dr Chiam on 13 November 2014 while Kevin was at the Henley Unit make it clear that at that stage they were considering referring him to Tarban or back to Cummins if his mental state "remains this acute". Dr Chiam rang Kevin's mother Deborah Meagher that day who was apparently uncomfortable with Kevin going to Tarban but also expressed concern that Kevin might abscond if he returned to Bridgeview."[74]

125. In a report to the Mental Health Review Tribunal dated 5 December 2014, Dr Ryan Lee stated:

"Whilst in the Cummins Unit, Kevin still continued to refuse all his medications, requiring administration of intramuscular psychotropics regularly. Eventually he was commenced on regular depot antipsychotic medication but continued to refuse his mood stabilising medication…Kevin was referred to Macquarie Hospital for further stabilisation of his mental state with an eventual aim to engage him in a rehabilitation program to improve his independent living skills…5 days after his transfer to the Bridgeview Unit for a period of 3 weeks after he demonstrated significant aggressive behaviours, refusing to take his medications…During his respite admission, we increased his depot medication as well as increased the frequency from monthly to fortnightly. There was some mild improvement in his level of aggressiveness and agitation so he was transferred back to Bridgeview. Since his transfer back to Bridgeview he still presents as psychotic and continues to refuse his medications daily…He has refused all mood stabilisers and is only agreeable to taking Olanzapine at night with convincing…We believe Bridgeview House provides the necessary level of monitoring and structure at this point in his treatment and it is the least restrictive form of safe and effective care currently".[75]

126. A Nursing Management Report to the Mental Health Review Tribunal by Julie Keane of the same date stated:

"On two occasions in recent weeks it has been necessary to give Mr Meagher Olanzapine IMI injection which necessitated his tempory (sic) T/F to the Henley Unit. Since his return to BVH he has only received Olanzapine IMI on 4 December 2014. Due to the current bed shortage in Henley he was unable to be T/F to that unit (as per his programme)."[76]

[73] Progress Note of Emily Buzacott dated 16 October 2014, Volume 1, tab 14(b), pg 6).
[74] Progress note of Dr Lee dated 13 November 2014; Progress Note of Dr Chiam dated 13 November 2014 (Volume 1, tab 15(b), pg 83 of 145 and pg 85 of 145).
[75] Report of Dr Ryan Lee dated 5 December 2014 (volume 1, tab 13, pg 7).
[76] Nursing Management Report to the Mental Health Review Tribunal by Julie Keane dated 5 December 2014 (volume 1, tab 13. pg 8).

127. Ms Fechter in her statement says “there is no evidence in the file to support Ms Keane’s statement that they had been unable to transfer Mr Meagher to Henley unit as per his programme, nor that this was the plan”[77].

128. In a report to the Mental Health Review Tribunal dated 11 December 2014 by social worker Bess Graham-Robinson, it says:

> *“Recommendation: That the involuntary order be extended for a further three months for medication compliance to be encouraged in a structured but open environment with a view to further stabilisation in mental state.”*[78]

129. In his oral evidence, Dr Chiam was asked whether the placement at Bridgeview was appropriate. He replied, “I think so. We had 2 assessments while he was at RNSH. On the second occasion he did seem more settled. And being an open ward we would be better able to engage with him. But obviously several days afterwards he became aggressive and was moved.” Dr Chiam said that the main reasons Kevin was transferred to Henley Unit were medication non-compliance and agitation. Dr Chiam said he thought it was appropriate for Kevin to be transferred back to Bridgeview on 17 November 2014 and he seemed more settled at that time.[79]

130. I accept that Kevin’s placement at Bridgeview House was reasonable.

Conclusion:

131. The cause of Kevin’s death came as a shock to those who knew and loved him. He was not someone who abused alcohol. He did, however, have some delusional thoughts. It would appear that his consumption of Listerine came into that category rather than as a result of alcohol abuse or addiction.

132. Kevin was much loved by his family who cared for him as best they could. He was creative and talented and he is missed very much by his family.

133. I thank the officer in charge, Constable Blaine Glawson for her investigation and the preparation of the brief. I thank my Counsel Assisting, Mr Cameron Gardiner and his instructing solicitor, Ms Jessica Natoli for their excellent work in assisting me before and during the inquest.

134. Finally, I offer my condolences to Kevin’s family who loved him very much.

[77] See statement of Maureen Fechter, Volume 2, tab 24.
[78] Social Workers Report for the Mental Health Review Tribunal by Bess Graham Robinson dated 11 December 2014 (Volume 1, tab 13, pg 12).
[79] Oral evidence 22 May 2018

Findings required by s 81(1):

135. As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it:

The identity of the deceased

The deceased person was Kevin John Meagher.

Date of death

He died on 15 December 2014.

Place of death

He died at Macquarie Hospital, North Ryde.

Cause of death

The medical cause of the death was alcohol toxicity.

Manner of death

Kevin's death was caused by consumption of a substantial quantity of alcohol. It appears that the source of the alcohol was the mouthwash, Listerine.

I close this inquest.

Magistrate Teresa O'Sullivan
Deputy State Coroner

5 July 2018