



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Epenesa Pahiva
Hearing dates:	25 June 2019 – 28 June 2019
Date of findings:	27 September 2019
Place of findings:	State Coroners Court, Lidcombe
Findings of:	State Coroner, Magistrate Teresa O'Sullivan
Catchwords:	CORONIAL LAW - Cause and manner of death – bleach bath – aged care – communication with family
File number:	2014/276764

<p>Representation:</p>	<p>Mr P Aitken, Counsel Assisting, instructed by Ms J Natoli (Crown Solicitor's Office)</p> <p>Ms H Cooper, Legal Aid NSW, for Ms Epenesa Pahiva's family</p> <p>Mr M Windsor SC, instructed by Ms Hilary Lee, Norton Rose Fulbright, for Castellorizian Aged Care Services. Ms Gaylene Barker Broad and Ms Linda Walton</p> <p>Mr Patrick Rooney, instructed by Mr Nicholas Regener, Makinson d'Apice, for Dr Lance Bear</p> <p>Ms Teni Berberian, instructed by Ms Amy Rogerson, HWL Ebsworth Lawyers, for Dr Thomas Savoulis</p> <p>Ms Katherine Doust, NSW Nurses and Midwives Association, for Ms Helena Bennett, Ms Petya Maksimova and Ms Maria Matriano</p>
<p>Non publication order:</p>	<p>Pursuant to s. 65(4) of the <i>Coroners Act 2009</i>, I direct that the following parts of the coroner's file are not to be supplied to any person:</p> <ol style="list-style-type: none"> 1. The sensitive photographs contained in Exhibit 1, at tabs 52, 54, 60 and 71; 2. The entirety of Exhibit 1, tab 64; and 3. The entirety of Exhibit 1, tab 65. <p>Pursuant to s. 74(1)(b) of the <i>Coroners Act 2009</i>, I direct that the following material is not to be published:</p> <ol style="list-style-type: none"> 4. The sensitive photographs contained in Exhibit 1, at tabs 52, 54, 60 and 71; 5. The entirety of Exhibit 1, tab 64; and 6. The entirety of Exhibit 1, tab 65.

Findings:	<p>Identity The person who died is Epenesa Pahiva born 12 April 1927</p> <p>Date of death Epenesa Pahiva died on 19 September 2014</p> <p>Place of death Epenesa Pahiva died at Concord Hospital</p> <p>Cause of death Epenesa Pahiva died of the combined effects of ischaemic heart disease and chronic obstructive pulmonary disease, on a background of chemical burns and dementia.</p> <p>Manner of death Epenesa Pahiva died of natural causes, following treatment for a skin condition, which resulted in chemical burns, which were healing at the time of her death.</p>
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Recommendations:	<p>To Castellorizian Aged Care Services:</p> <ol style="list-style-type: none">1. That consideration be given to how clinical staff training can be delivered effectively, including methods of evaluating participants' competency in the knowledge and skills being taught.2. That consideration be given to identifying an effective method of reminding clinicians of their obligations when a resident is prescribed a new medication (such as, for example, placing a checklist on the resident's file or placing a sign somewhere prominent) including any need to seek family consent.3. That consideration be given to the current medication management policy as to whether it appropriately provides (i) for all medications to be written by the doctor on the resident's medication chart and (ii) for written instructions to be provided by the doctor when necessary, including for novel treatments, and (iii) to ensure that treatment is not commenced without that documentation being provided.4. That consideration be given to providing assertiveness training for Registered Nurses and Assistants in Nursing, particularly in relation to dealing with medical professionals, and raising issues of concern at an internal level.
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The Coroners Act 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 Epenesa Pahiva

Introduction

1. This inquest concerns the death of Epenesa Pahiva ("**Mrs Pahiva**") who died on 19 September 2014 at the age of 87 years.
2. Mrs Pahiva was born on 12 April 1927 in Niue and was a schoolteacher in her working life. She was married to Mr Togia Pahiva and, together, they had eight children, and also looked after two other children on a permanent basis. At the time of her death, Mrs Pahiva had 12 grandchildren and 13 great grandchildren, and many of her family members were able to attend the inquest. At the inquest, Mrs Pahiva's family paid tribute to her as a strong woman, who was kind, caring, generous and supportive, and who had strong family values. It is clear that Mrs Pahiva was very much loved by her family.
3. Mrs Pahiva was diagnosed with dementia in or around 2007 and went to live at Castellorizian Aged Care Services, a nursing home located in Kensington ("**the nursing home**"). Over time, Mrs Pahiva's dementia became progressively worse and she lost mobility and became wheelchair bound. By 2014, her dementia was considered severe and she was reported to have become mostly non-verbal or to have lost the ability to communicate to her nurses and carers in English.

The nature of an inquest

4. The role of a Coroner, as set out in s. 81 of the *Coroner's Act 2009* ("the Act"), is to make findings as to:
 - a. The identity of the deceased;
 - b. The date and place of the person's death;
 - c. The physical or medical cause of death; and
 - d. The manner of death, in other words, the circumstances surrounding the death.
5. There is no controversy as to Mrs Pahiva's identity, or about the date or place of her death. The focus of the inquest was therefore the cause and manner of Mrs Pahiva's death.

6. A secondary purpose of an inquest is to determine whether it is necessary or desirable to make any recommendations in relation to any matter connected with the death, including in relation to matters of public health and safety.¹

The nursing home

7. In 2014, the nursing home was divided into two sides, Side A and Side B, and had 55 beds in total. There were three shifts each day for nurses: the morning shift, the afternoon shift and the night shift. Each side had one registered nurse rostered on during the morning shift and one registered nurse rostered on during the afternoon shift. During the evening shift, one registered nurse was rostered on for the entire facility. There were a number of assistants in nursing ("**AINs**") caring for residents, under the supervision of the registered nurses. At the start of each shift there was a handover meeting in which the care needs of residents would be handed over to the registered nurses commencing their shift.
8. Mrs Pahiva was a resident on side A of the nursing home, in room 15, bed 18.²

The bleach treatments

9. In early 2014, Mrs Pahiva developed what her general practitioner, Dr Thomas Savoulis ("**Dr Savoulis**"), describes as a "rash", which first started on her upper arm and then developed on her trunk, legs and arms. In April 2014, Dr Savoulis noted that Mrs Pahiva had developed lesions on her chest. A skin swab confirmed the presence of staphylococcus aureus. Treatments, including a number of different antibiotics and Kenacomb cream, were tried, without success. On 30 June 2014, Dr Savoulis referred Mrs Pahiva to Dr Lance Bear ("**Dr Bear**"), dermatologist, as the rash was persisting despite treatment.³

Consultation with Dr Bear on 10 July 2014

10. On 10 July 2014, Dr Bear attended the nursing home to review Mrs Pahiva. Two registered nurses were present and spoke with Dr Bear, Registered Nurse Petya Maksimova ("**Nurse Maksimova**") and Registered Nurse Linda Walton ("**Nurse Walton**"). Nurse Maksimova was rostered on for Mrs Pahiva's side of the nursing home, Side A, and Nurse Walton was rostered on for Side B of the nursing home.

¹ Section 82 of the Act.

² Exhibit 1, tab 56, 2014, p. 2.

³ Exhibit 1, tab 48; tab 56, page 39.

11. Precisely what occurred during Dr Bear's attendance at the nursing home was a matter in contention in the inquest. Accordingly, I will set out below the competing evidence and make findings as to the facts.

Evidence of Nurse Walton

12. Nurse Walton states that, during the morning handover, she was informed that Dr Bear was scheduled to attend the nursing home to see Mrs Pahiva at 4pm, however at around 11.50am, while she was preparing medications for the 12pm medication round, Dr Bear arrived at the nursing home unexpectedly early. Nurse Walton states that Dr Bear said words to the effect of, "*I'm in a hurry. I only have a few minutes free.*"⁴
13. Nurse Walton and an AIN, Ms Sachina, took Mrs Pahiva back her room for the consultation, which Nurse Walton states took around 2 to 5 minutes. Nurse Walton states that she would not ordinarily be present for a resident's medical examination if she was not the nurse responsible for that resident's side of the nursing home, however because she had not seen Nurse Maksimova since Dr Bear's arrival, she felt obliged to stay and help.⁵
14. Nurse Walton and Dr Bear then attended the Nurses' Station, where they were joined by Nurse Maksimova. At the Nurses' Station, Dr Bear was given Mrs Pahiva's medical file, which included her medication chart and recent photographs of her skin.⁶
15. As Nurse Walton perceived it, Nurse Maksimova took over the consultation at this point, as she was the registered nurse responsible for Side A of the nursing home that day.⁷
16. We now come to the primary point of contention in the evidence. Nurse Walton's evidence in both her statement dated 26 June 2015 and in her oral evidence before the inquest was that Dr Bear told the nurses that Mrs Pahiva needed to be treated with a bath comprised of "*half bleach and half water*".⁸ In her oral evidence, Nurse Walton said she had a clear recollection that those words had been used by

⁴ Exhibit 1, tab 39, paragraphs [34] and [36-37]; transcript of oral evidence of Nurse Walton, 25 June 2019, p. 74.

⁵ Exhibit 1, tab 39, paragraphs [40], [44] and [48]-[50].

⁶ Exhibit 1, tab 39, paragraphs [55] – [56].

⁷ Exhibit 1, tab 39, paragraph [57].

⁸ Exhibit 1, tab 39, paragraph [58].

Dr Bear.⁹ She did not accept that she may have misunderstood what Dr Bear had said.¹⁰

17. Counsel assisting suggested to Nurse Walton that Dr Bear could have said, “*use half a cup of bleach to half a tub of water*” and Nurse Walton replied that the words “*cup*” and “*tub*” had not been mentioned by Dr Bear.¹¹
18. Nurse Walton said that she was aware at the time that bleach was a corrosive chemical, and she couldn’t understand why any resident would be treated with that substance.¹² She said Nurse Maksimova asked Dr Bear, “*won’t it burn her skin?*” to which Dr Bear replied, “*Yes, that is the point – to get rid of the bacteria*”.¹³
19. Nurse Walton went to check whether the nursing home had a bath which took around 30 seconds to one minute. There was no bathtub. When she returned, she states that Nurse Maksimova and Dr Bear were discussing how the treatment could be administered without a bathtub and she heard them discussing the idea of applying the solution using towels.¹⁴
20. Nurse Walton states that it was the usual practice for a specialist doctor to call the referring doctor before leaving the nursing home. She saw Dr Bear telephone Dr Savoulis, but was standing behind Dr Bear, and was not close enough to hear the conversation. She states that she was not listening carefully as Mrs Pahiva was not on her side of the floor.¹⁵
21. Nurse Walton told the inquest that doctors’ orders would ordinarily be written in the resident’s medication chart and progress notes. She states that she did not make any record of the consultation with Dr Bear because that was Nurse Maksimova’s responsibility as the nurse responsible for Mrs Pahiva’s side of the nursing home that shift.¹⁶ She said that the procedure at the time was for the attending doctor to write in the “*black medical file of the resident*” and for the registered nurse in charge of the consult to then enter that information into the resident’s electronic medical record in iCare.¹⁷ Nurse Walton said that she saw Dr Bear writing, and

⁹ Transcript of oral evidence of Nurse Walton, 25 June 2019, p. 75.

¹⁰ Transcript of oral evidence of Nurse Walton, 25 June 2019, p. 75.

¹¹ Transcript of oral evidence of Nurse Walton, 25 June 2019, p. 75.

¹² Transcript of oral evidence of Nurse Walton, 25 June 2019, p. 75.

¹³ Transcript of oral evidence of Nurse Walton, 25 June 2019, p. 75-76.

¹⁴ Exhibit 1, tab 39, paragraphs [59]-[60].

¹⁵ Exhibit 1, tab 39, paragraphs [71] – [72]; transcript of oral evidence of Nurse Walton on 26 June 2019, p. 36.

¹⁶ Exhibit 1, tab 39, paragraph [66]; transcript of oral evidence of Nurse Walton, 25 June 2019, p. 78.

¹⁷ Transcript of oral evidence of Nurse Walton on 26 June 2019, p. 25.

assumed that he was writing in Mrs Pahiva's medical notes, as she had given those to him, opened at the appropriate page.¹⁸

Evidence of Nurse Maksimova

Dr Bear's consultation

22. Nurse Maksimova states that she had been told at the morning handover that Dr Bear would be attending the nursing home to see Mrs Pahiva at 4.30pm however, around midday, while she was giving the residents their lunchtime medications, she saw Nurse Walton and Dr Bear talking at the Nurses' Station. Nurse Maksimova says she handed Mrs Pahiva's medication chart to Dr Bear and showed him photographs she had taken of Mrs Pahiva's skin a week earlier.¹⁹ Her recollection is that Dr Bear appeared to be in a hurry.²⁰
23. In her statement dated 28 August 2016, Nurse Maksimova said that Dr Bear then started talking about bleach baths, and said the words, "*half and half*" bleach to water.²¹ In oral evidence, it was suggested to Nurse Maksimova that Dr Bear had instead said something like, "*half a cup of bleach to half a tub of bathwater*".²² Nurse Maksimova rejected that proposition, saying she was certain she had heard "*half and half*" and that the words "*cup*" and "*tub*" were not mentioned by Dr Bear. She did not accept that there was any possibility that she had misunderstood or misheard what was said by Dr Bear.²³
24. Nurse Maksimova agreed she had said to Dr Bear something along the lines of, "*won't it burn her skin?*" and said she had asked that question due to the mere fact of bleach forming part of the treatment, and not because of the particular concentration of bleach. She knew at the time that bleach was caustic and that, without dilution, it could burn the skin. She agreed with counsel assisting that a "*half and half*" bleach to water concentration would suggest a real risk of burning the skin.²⁴
25. Nurse Maksimova said that Dr Bear had been told that there was no bath at the nursing home, and did not appear satisfied with the suggestion that the treatment

¹⁸ Exhibit 1, tab 39, paragraph [74]; transcript of oral evidence of Nurse Walton, 25 June 2019, p. 79.

¹⁹ Exhibit 1, tab 25, paragraph [13]; transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 45.

²⁰ Exhibit 1, tab 25, paragraphs [12]-[13].

²¹ Exhibit 1, tab 25, paragraph [15].

²² Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 48.

²³ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 51 and 86.

²⁴ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p.50-52.

be administered in the shower, informing the nurses that Mrs Pahiva needed to be “soaked” in the solution.²⁵

26. In her statement, Nurse Maksimova described her recollection of what occurred next:²⁶

“I suggested soaking towels in the bleach solution, then wrapping the towels around Mrs Pahiva’s body for approximately 20 minutes, pouring more bleach solution onto the towels if necessary to keep them warm and wet. Dr Bear agreed to this method.”

27. In her oral evidence, Nurse Maksimova agreed that she had suggested the use of towels but said she could not remember who had suggested the timeframe of 20 minutes.²⁷

28. Nurse Maksimova said she then suggested that Dr Bear telephone Dr Savoulis to inform him of the new treatment. She said she passed the phone to Dr Bear, and heard him say to Dr Savoulis, “bleach bath, half water half bleach”.²⁸ In her oral evidence, Nurse Maksimova said that she had heard Dr Bear mention to Dr Savoulis that there was no bath at the nursing home and that towels would be used instead, however conceded that this was not mentioned in her statement.²⁹

29. Nurse Maksimova said that the phone was not on a speaker setting.³⁰

30. Nurse Maksimova said she had understood from her discussion with Dr Bear that Dr Bear was providing her with instructions as to what she was to do next. She said that, as he was leaving, Dr Bear told her to contact him in a couple of days to let him know how Mrs Pahiva was progressing. Nurse Maksimova was asked whether she had understood that the bleach treatment was to be administered to Mrs Pahiva immediately, and she replied, “there was no discussion to wait for something”.³¹

31. Nurse Maksimova said she had never heard of a bleach treatment prior to that day. She did not specifically ask Dr Bear to write down his instructions in Mrs Pahiva’s

²⁵ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 48.

²⁶ Exhibit 1, tab 25, paragraph [17].

²⁷ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 48-49.

²⁸ Exhibit 1, tab 25, paragraph [18].

²⁹ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p.49-50.

³⁰ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 86-87.

³¹ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 88.

medical file, but had expected him to do so.³² She observed Dr Bear writing on his own card, which was sitting on top of Mrs Pahiva's medical file, which had been handed to him opened at the correct page for him to write in. She expected that his next step would be to write in the medical file. After Dr Bear left the nursing home, Nurse Maksimova completed the medication round that had been interrupted and, following this, checked Mrs Pahiva's file and saw that Dr Bear had not made any record in it.³³

Events following Dr Bear's consultation

32. Nurse Maksimova left the nursing home at 1pm that day for personal reasons (two hours prior to the usual conclusion of her shift) and the afternoon nurse commenced her shift early. Nurse Maksimova said that, before she left for the day, she went to see the care manager of the facility, Helena Bennett, and raised concerns that Dr Bear had prescribed a "very unusual" treatment and had not written in the medical file. Nurse Bennett told her that she would purchase the bleach on her way home. Nurse Maksimova said she did not call Dr Bear's surgery to seek clarification regarding the treatment due to time pressures.³⁴
33. Nurse Maksimova said she had expected the afternoon staff to follow up with Dr Bear as to the instructions for the bleach treatment, under the supervision of Nurse Bennett, or that Nurse Bennett would follow up with Dr Bear herself, although she conceded that she did not ask Nurse Bennett to follow up with Dr Bear, and did not make an entry in the progress notes to alert staff that this needed to occur.³⁵
34. Nurse Maksimova said she did not record the treatment in Mrs Pahiva's electronic record before leaving for the day, because Dr Bear had not made a record of the treatment and the bleach was yet to be purchased. She said that, for the same reason, she did not contact Mrs Pahiva's family about the treatment that day. In her oral evidence, Nurse Maksimova clarified that, by the above, she had meant that she had not been sure at the time that the treatment was actually going to occur, because it had not been clarified in the notes.³⁶

³² Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 49.

³³ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 45-46.

³⁴ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 46-47.

³⁵ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 47-48.

³⁶ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 55.

Evidence of Dr Bear

35. In Dr Bear's statement, provided to the inquest, he said that his usual procedure was as follows:

*"My procedure is to review the referral letter from the attending LMO (Local medical Officer), peruse the patients' Medical (sic) records, noting the patient's medical history, ascertain medical problems, medication and disabilities. I then see the patient write my own medical records **and usually** write in the nursing home records. If the patient's management is problematic, I contact the LMO immediately and discuss diagnosis and treatment. Then by way of correspondence, I hand the care of the patient back to the LMO. A letter is dictated and posted to the LMO within the following week. I am always available to the LMO and the nursing staff for further advice."*³⁷

36. Dr Bear said that he examined Mrs Pahiva and diagnosed her with "*rapidly progressing erosive impetigo, secondary to a known MRSA*" (MRSA being an abbreviation for Methicillin Resistant Staphylococcus Aureus).³⁸ He said that the optimal treatment for this condition was soaking in a bleach bath for 15 minutes "*as the solution reaches all the difficult areas under skin folds...that are hard to reach where the staph bacteria make their nests.*"³⁹ He stated that the correct dilution for the bleach bath was half a cup (125 mls) of household bleach to half a bathtub (80 litres) of lukewarm water.⁴⁰

37. Annexed to Dr Bear's statement was a document titled "*Bleach Bath Instructions*" which he said he would ordinarily provide to his patients in the event that he recommended bleach baths to them, however he did not have that document with him at the nursing home on 10 July 2014, because he did not know Mrs Pahiva's diagnosis prior to examining her.⁴¹ The Bleach Bath Instructions stated as follows:

"1. Half fill a bath tub with lukewarm water.

2. Add ½ cup (125 mls) of household bleach to the bath water (check that it is about 6% sodium hypochlorite and unscented).

3. Mix well and soak in the bath tub for 10-15 minutes.

³⁷ Exhibit 1, tab 42.

³⁸ Exhibit 1, tab 42, p. 2.

³⁹ Exhibit 1, tab 42, p. 3.

⁴⁰ Exhibit 1, tab 42, p. 3.

⁴¹ Exhibit 1, tab 42, p. 4..

4. Rinse off with tap water and pat skin dry with a towel.

5. Use dilute bleach baths three times a week until infection clears.

CAUTION: DO NOT USE UNDILUTED BLEACH DIRECTLY ON THE SKIN...

Please contact Dr Lance Bear on [phone number supplied]if you experience any difficulties or have any concerns."

38. In his oral evidence, Dr Bear said he spoke with several females at the nursing home following his examination of Mrs Pahiva, however was not aware at the time whether they were registered nurses or AINs.⁴² He said that he told them that the appropriate treatment for Mrs Pahiva's skin condition was a bleach bath, using half a cup of bleach to half a tub of water, or words to that effect.⁴³
39. Dr Bear agreed that he sent a letter by post to Dr Savoulis some days after the consultation which was dated 11 July 2014, and which stated, among other things, "*I have instructed the nurses to give the patient bleach baths or the equivalent in the shower of half a cup of bleach to half a tub of bathwater...you should feel free to contact me Tom if you are having trouble.*"⁴⁴ Dr Bear accepted in his oral evidence that he did not send this letter to Dr Savoulis until after Mrs Pahiva had been admitted to Concord Hospital⁴⁵ (which occurred on 16 July 2014).
40. In his statement prepared for the inquest, Dr Bear said that he "*gave instructions to the nurses at the nursing bay and also repeated the instructions to the LMO (Dr Savoulis) by phone in the presence of the nurses. My instructions were as per my ...letter addressed to Dr Savoulis.*"⁴⁶
41. Dr Bear said he made notes on Mrs Pahiva's "*patient record 5x8 card, retained by me at my practice*", but did not make an entry in her nursing home medical records, although it was his usual practice to do so. Dr Bear said that it had been an oversight not to do so on this occasion.⁴⁷
42. In Dr Bear's oral evidence before the inquest, he said that, upon discovering that the nursing home did not have a bath, he formed the view that the treatment would

⁴² Transcript of oral evidence of Dr Bear on 25 June 2019, p. 25.

⁴³ Transcript of oral evidence of Dr Bear on 25 June 2019, p. 33.

⁴⁴ Exhibit 1, tab 56, 2014, p. 40; transcript of oral evidence of Dr Bear on 25 June 2019, p. 29-30.

⁴⁵ Transcript of oral evidence of Dr Bear on 25 June 2019, p.58.

⁴⁶ Exhibit 1, tab 42, p. 3.

⁴⁷ Exhibit 1, tab 42, pp. 2 and4, transcript of oral evidence of Dr Bear on 25 June 2019, p. 38.

need to be administered in the shower, although this would not be optimal. He said that he thought, perhaps, that a ten litre bucket could be used and that, *“you could either pour it over the patient or put on the patient...however you wanted to get that concentration on the patient.”*

43. He said he did not know, at the time of the consultation, what the equivalent dilution of half a cup of bleach to half a bathtub of water was for administration of the treatment in the shower, and was unable to work this out on the spot because he did not know the volume of half a bathtub. He said that he had planned to research this at a later time and then provide clarification. He said that he had looked this up on the internet, but before he had an opportunity to provide clarification, he received a telephone call saying that Mrs Pahiva had been admitted to Concord Hospital with burns⁴⁸ (As previously stated, Mrs Pahiva was not admitted to Concord Hospital until 6 days after his consultation, on 16 July 2014).
44. I have extracted below some key aspects of Dr Bear’s oral evidence:

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Q. So what were you contemplating by way of treatment via the use of a shower?

A. Well I was going to find out on the net and find out what the equivalent which probably isn’t as good dilution wise of half a cup of bleach, 125 mls of bleach to 80 litres of water.

Q. When you say you were going to, did you?

A. Yes I did.

Q: What did you do with that information?

A. Well I was going to ring up on Monday morning but before I could even put my knowledge into practice I was rung by the burns unit at Concord Hospital.

Q. Can I suggest to you that the burns unit at Concord Hospital would not have been aware of Ms Pahiva’s condition until sometime on the evening of Tuesday 15 July, do you accept that?

A. I – as I said its five years ago, I don’t remember.

...

⁴⁸ Transcript of oral evidence of Dr Bear on 25 June 2019, p. 26, 28, 35-36.

Q. Did you tell them that you didn't want the treatment to be commenced until you had sorted out how it could be done via this alternative method?

A. I didn't leave any instructions for treatment.

Q. Did you tell them that you weren't leaving any instructions for treatment because you didn't want it to start yet?

A. I wanted to give the right dilution.

Q. Did you tell them that you weren't leaving instructions for treatment?

A. Well I didn't leave instructions because I didn't know the treatment myself.

Q. So my questions is did you tell the people you were speaking to that you weren't leaving instructions for treatment?

A. I don't recall.

...

Q. It appears to be a commonly shared view that you spoke to Dr Savoulis on the day of your visit to see Ms Pahiva?

A. Correct.

...

Q. Did you speak to Dr Savoulis about your concern as to this alternative method of treatment?

A. I told him that the best treatment was what I said previously the bleach bath and I thought and I said to him that I think we could extrapolate from that a dilution factor which I wasn't certain of the factor at the time, how much bleach to water was necessary.

Q. What was your thinking at the time as to how this bleach treatment could be achieved using a shower?

A. I wanted to first find out what the correct concentration was and I anticipated perhaps a ten litre bucket could be used of water and put the appropriate amount of bleach.

Q. Then how would the contents of that bucket be used, how would it be practically used to treat the patient?

A. If you in fact as I know now that it would be about 20 mls of bleach to 10 litres of water you could either pour it over the patient or put on the patient, I don't think it would make much difference.

Her Honour:

Q. I didn't understand that answer, you could pour it over the patient or what was the next?

A. However you wanted to get that concentration on the patient.

Aitken

Q. Would you accept that if you poured the concentration over the patient it would likely remain on the patient only for as long as the dilution was dripping onto the person or washing over the person?

A. What I believe is that it would be the best one could do in the situation, in other words as I said we didn't have an optimal situation.

Q. Nurse Maksimova maintains that she raised with you the problem of using a shower and discussed the use of towels soaked in the solution?

A. I don't recall that.

Q. Do you mean by your answer that it could have happened but you simply don't know that there was a discussion about use of towels?

A. I don't recall.

Q. Would that not be another way of ensuring that the solution maintained contact with the skin for some period of time rather than simply washing over the person?

A. I accept that.

Q. Is it possible that that could have been discussed as a way of ensuring a better likelihood of treatment outcome, positive outcome, than simply washing the patient in the solution?

A. As I said I don't recall.

...

Q. Do you agree that what appears on page 40 is a letter on your letterhead addressed to Dr Savoulis dated 11 July 2014?

A. Yes.

Q. And is that a copy of a letter that you sent to Dr Savoulis?

A. I believe I sent a letter like that to Dr Savoulis.

...

Q. Would it be your usual practice to send a letter to the GP reporting on your diagnosis and suggested treatment the same day that it was typed?

A. It is usually two or three days later.

...

Q. And then in the fourth paragraph you said these words, "I have instructed the nurses to give the patient bleach baths or the equivalent in the shower of half a cup of bleach to half a tub of bathwater." Do you see that?

A. I do see that yes.

Q. Do you accept that on the face of those words they appear to be saying to Dr Savoulis that you had given bleach treatment instructions already to the nurses?

...

OBJECTION (WINDSOR) NOT RESPONSIVE. QUESTION REPHRASED.

Q. Do you accept that the words, "I have instructed the nurses to give the patient bleach baths or the equivalent in the shower" suggest that you have spoken to the nurses and told them "this is the treatment"?

A. I have not in my own mind, at that time, told the nurses what the concentration was, because I wanted to get the accurate concentration.

Q. You used the words, "I have instructed the nurses to give the patient"...that would suggest, would it not, that you had given instructions to the nurses?

...

Her Honour

Q. Dr Bear I don't think you've responded to the question..."I have instructed the nurses to give the patient bleach baths", do you agree that that is saying that you have instructed the nurses and that is what you did. Yes or no?...

A. I think that's a yes no answer in that if they knew what the equivalent was and the concentration they could go ahead with it, but because I didn't know, at that time, the treatment shouldn't have gone ahead.

Q. Do you agree with me that there's nothing in your letter that you didn't want the nurses to go ahead until you'd worked out the formula?

A. Correct.

Q. There's nothing in it that says that?

A. Well yeah, I thought they would get back to me or get back to Tom, Dr Savoulis.

Aitken:

Q. When you say you thought they would get back to you or Dr Savoulis?

A. Mm.

Q. According to you, hadn't you left them with the impression that you were going to get back to them?

A. Look I usually consult with the general practitioner and then I leave the patient back with the general practitioner and I had no intention of continuing to participate in the control of the patient.

Q. So do you mean by that, that you had no expectation that either you would contact the home to clarify your thoughts about how the treatment would be carried out?

A. I would have been very happy if they could contact me if they weren't sure.

Q. My question was you had no intention you mean of contacting the home to clarify what you meant by carrying out a bleach bath in the shower?

A. I don't recall sorry.

Q. Did – but you expected that they might contact you, that is, the home's representatives might contact you?

A. Well they had contacted me two or three times before to see Mrs Pahiva.

Her Honour:

...

Q. So again please answer the question that you've been asked doctor?

A. Well I was going to more or less to keep in contact with Dr Savoulis.

Aitken:

...

Q. So are you saying that in your mind Dr Savoulis would then decide whether to commence the treatment or not and instruct the nurses accordingly, is that what you are saying?

A. I am saying that he should be overseeing it yes.

Q. And was that an expectation or something that was explicitly discussed?

A. It is the usual practice.

Q. Was there a need to commence the treatment immediately in your view?

A. I believe it could wait several days.

Her Honour: Could I just interrupt...Dr Bear part of your evidence earlier was that you needed to research I think you said, look on the internet what the correct formula would be if there was no bath.

Q. Why couldn't you just do that on the spot. I mean you were saying its 125 mls bleach to 80 litres of water, couldn't you do some simple mathematics?

A. Yes...I wasn't, this is the truth, absolutely sure how much half a tub was.

Q. Well that's another thing I'm concerned about, what is half a tub and how would the nurses know what half a tub was?

A. Well the answer to this is that whether it is an 80 litre tub or a hundred litre it is not that imperative as long as the dilution is very diluted bleach.

Q. So...you knew it was half a cup of bleach but you didn't know the amount of water?

A. If you look on the net most of them don't give that, I was amazed. I actually spent a bit of time trying to find out all that."

45. In oral evidence, Dr Bear said that it had been his idea to call Dr Savoulis, because he wanted to tell him that the ideal treatment couldn't be implemented, because there was no bath at the nursing home. He said that he had arranged for the phone

to be put on a speaker setting, because *“I wanted the nursing staff to hear for the second time what was going on”*.⁴⁹

46. As set out above, Dr Bear said in his oral evidence that he did not give the nurses any instructions on 10 July 2014 in relation to administering the bleach treatment in the shower. Dr Bear also said in his oral evidence that he did not expect the nurses to commence the bleach treatment until Dr Savoulis had put in place a treatment plan.⁵⁰
47. Dr Bear accepted that he had understood when he received the letter of referral from Dr Savoulis that the treatment regime that Dr Savoulis had implemented did not appear to be solving Mrs Pahiva’s skin problems, and that Dr Savoulis had accordingly sought his advice as a specialist dermatologist to assist in resolving a problem that Dr Savoulis couldn’t resolve. Dr Bear accepted that he had taken on that responsibility by attending the home to see Mrs Pahiva on 10 July 2014 and that he had recognized that responsibility at all times during the course of that day.⁵¹
48. Dr Bear gave the following oral evidence:

Berberian

Q. As part of your practice you would get referrals from local GPs who would refer patients to you, wouldn’t you?

A. Correct.

Q. The purpose of that referral would be for specialist treatment of dermatological conditions which the GPs considered was appropriate for a specialist, is that correct?

A. Yes.

Q. You’d agreed with Mr Windsor that the purpose of the referral from Dr Savoulis to you of Mrs Pahiva on 30 June 2014 was essentially because the treatment that Dr Savoulis had been undertaking was clearly not working?

A. Correct.

⁴⁹ Transcript of oral evidence of Dr Bear on 25 June 2019, p. 52, 66.

⁵⁰ Transcript of oral evidence of Dr Bear on 25 June 2019, p. 41.

⁵¹ Transcript of oral evidence of Dr Bear on 25 June 2019, p. 50.

Q. Now at the time that you were examining Mrs Pahiva on 10 July 2014 you were examining her in your capacity as a treating specialist were you not?

A. Correct.

Q. As treating specialist it is your obligation is it not to arrive at a diagnosis, do you agree?

A. Correct yes.

Q. In relation to Mrs Pahiva you did that very fact, in that you examined her, you agree?

A. Yes.

Q. You arrived at a diagnosis, do you agree?

A. Yes.

Q. That you gave directions in relation to a treatment plan, do you agree?

A. Yes.

Q. That is usually done in the form of a letter, do you agree?

A. Yes.

Q. Which you've given evidence is usually posted two or three days after the consultation, you agree with that?

A. Yes.

49. Dr Bear said that he did not recall Nurse Maksimova suggesting that the nursing home staff wrap towels around Mrs Pahiva to administer the bleach treatment, but accepted that, "*perhaps*", if the discussion had occurred, it could have left the nurses with the impression that this was the way forward. Dr Bear thought that the use of towels "*would be ok if they got the right dilution.*"⁵²
50. Dr Bear said that he did not remember Nurse Maksimova raising any concern about the use of bleach to treat Mrs Pahiva's skin during the consultation.⁵³
51. Dr Bear agreed that he had known at the time of the consultation that maintenance of clinical records served an important function of allowing those treating the patient to know the treating regime in place, the diagnosis and the manner in which

⁵² Transcript of oral evidence of Dr Bear on 25 June 2019, p. 44-45.

⁵³ Transcript of oral evidence of Dr Bear on 25 June 2019, p. 44.

ongoing treatment for a resident should be performed or undertaken. He agreed that these were important matters.⁵⁴

52. On 16 July 2014, after Mrs Pahiva had been admitted to hospital, Dr Bear returned to the nursing home and made a handwritten note in Mrs Pahiva's medical file as follows: "*...to have bleach baths ½ cup of bleach to ½ tub of water or similar concentration. Spoke to Dr Tom Savoulis*".

Evidence of Dr Savoulis

53. Dr Savoulis said that Dr Bear telephoned him from the nursing home on 10 July 2014 and told him that he thought Mrs Pahiva likely had bullous impetigo and that the best treatment was to "*apply a solution of half a cup of bleach to half a tub of water*". He was certain that he remembered the conversation correctly.⁵⁵
54. Dr Savoulis did not make a contemporaneous record of the conversation,⁵⁶ however he told Ms Gaye Perrins, Executive Manager of the nursing home, over the phone on 16 July 2014, that Dr Bear had said, "*half a cup of bleach to half a tub of water*".⁵⁷
55. In his statement, Dr Savoulis recalled that, "*during my telephone conversation with Dr Bear, he was also issuing the same instructions (i.e, to apply a solution of half a cup of bleach to half a tub of water)...to persons at the nursing home.*"⁵⁸
56. Dr Savoulis said he formed the view that the telephone was on a speaker setting during this conversation, as he could hear Dr Bear, "*speaking to me and also just as loudly I would hear other people, female voices, which I presume were nurses, interacting.*"⁵⁹
57. Dr Savoulis said his understanding from the telephone conversation was that Dr Bear was giving the nurses instructions to start the treatment and that his own involvement would not be required until "*later down the track*". Dr Savoulis said he formed this understanding during the telephone call as he could hear Dr Bear giving instructions to the nurses about the treatment.⁶⁰

⁵⁴ Transcript of oral evidence of Dr Bear on 25 June 2019, p. 55-56.

⁵⁵ Exhibit 1, tab 48; transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 2-3

⁵⁶ Exhibit 1, tab 48, p.4

⁵⁷ Exhibit 1, tab 32, annexure B; oral evidence of Gaye Perrins on 27 June 2019, p. 62.

⁵⁸ Exhibit 1, tab 48, paragraph [33].

⁵⁹ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 2-3.

⁶⁰ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p.2-3.

58. Dr Savoulis recalled that there was some discussion during the telephone conversation about the nursing home not having a bathtub and that another way of delivering the treatment would need to be found. Dr Savoulis said that Dr Bear had mentioned the shower and that he had understood that *“the bleach would be diluted to the same proportion as he was suggesting that would have been in a bath...and then somehow applied to the person”*. Dr Savoulis did not recall having any discussion about the method by which the solution could be applied to Mrs Pahiva.⁶¹ He was asked by counsel assisting whether he recalled whether there was any mention of the word *“towel”* or *“towels”* and he replied, *“No, I don’t recall that”*.⁶²
59. Dr Savoulis was asked by counsel assisting whether, at the time, he considered that providing verbal instructions to the nurses for such a treatment would be sufficient and he replied that he thought Dr Bear *“would have written something in the notes”*.⁶³
60. Dr Savoulis said that he received Dr Bear’s letter dated 11 July 2014 after Mrs Pahiva was admitted to the burns unit at Concord Hospital on 16 July 2014.⁶⁴ He said this did not surprise him, as he had referred patients to Dr Bear in the past and on those occasions Dr Bear had taken *“a week or two”* to write to him after seeing the patients.⁶⁵
61. Dr Savoulis said that he had referred other patients to Dr Bear prior to 30 June 2014, but could not recall having previously referred to him another patient in a nursing home. He said that in most previous instances when he had referred a patient to Dr Bear, it was *“Dr Bear that was making the diagnosis and prescribing treatment and carrying on the treatment and eventually the patient came back to me”*.⁶⁶
62. Dr Savoulis said he had asked a specialist to attend the nursing home to see a patient *“only twice in my career”* and that there had been no prearranged expectation as to when care would be transferred back to him on those occasions. He said his expectation was the same in the nursing home context as when he referred patients to see a specialist in private practice, namely, that *“the specialist*

⁶¹ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 3.

⁶² Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 7.

⁶³ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 6.

⁶⁴ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p 5.

⁶⁵ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 6.

⁶⁶ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 1-2.

*sees the...patient, and makes a diagnosis and starts treatment or suggests a treatment.*⁶⁷

63. It was put to Dr Savoulis by counsel assisting that Dr Bear had suggested in his oral evidence that he had expected when he telephoned Dr Savoulis on 10 July 2014, that a transfer of Mrs Pahiva's care from himself to Dr Savoulis had occurred at that point. Dr Savoulis responded that this had not been expressed to him by Dr Bear.⁶⁸

Evidence of Nurse Bennett

64. Helena Bennett, registered nurse, ("**Nurse Bennett**") commenced her employment at the nursing home in October 2013 as an Educator and Quality Coordinator. Following the resignation of the Care Manager in March 2014, Nurse Bennett was assigned the role of acting Care Manager in addition to her existing duties, and carried out both roles between March 2014 and July 2014.⁶⁹
65. In her role as acting Care Manager, Nurse Bennett was the supervisor of all the registered nurses and AINs involved in clinical care. She agreed that, if a nurse or an AIN had an issue or concern, she would have been their first port of call for consultation.⁷⁰ At the same time, she was performing her Educator and Quality Coordinator role of "*organizing training and education for the staff, as well as doing the quality audits and doing quality improvements for the facility as well.*"⁷¹ Nurse Bennett agreed with counsel assisting's suggestion that, due to her Educator and Quality Coordinator role, if there was anyone in the facility who ought to have known the nursing home's policies and procedures, it would have been her.⁷²
66. Nurse Bennett's evidence was that, on 10 July 2014, Nurse Maksimova and Nurse Walton came to see her and informed her that Dr Bear had prescribed bleach baths for Mrs Pahiva. Although she could not recall the exact content of the conversation, her best recollection was that the nurses had told her that they had informed Dr Bear that there was no bath at the nursing home and that a decision had then been made between the three of them (Nurses Maksimova and Walton

⁶⁷ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p 2.

⁶⁸ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p 2.

⁶⁹ Exhibit 1, tab 19, p. 4-5.

⁷⁰ Transcript of oral evidence of Nurse Bennett on 27 June 2019, p. 27.

⁷¹ Exhibit 1, tab 19, p. 4-5.

⁷² Transcript of oral evidence of Nurse Bennett on 27 June 2019, p. 28-29.

and Dr Bear) that they would soak towels in the solution and put those around Mrs Pahiva. Nurse Bennett had understood from her conversation with Nurses Maksimova and Walton that the solution was to be “*one part bleach, one part water*”.⁷³

67. In her oral evidence at the inquest, Nurse Bennett agreed with counsel assisting’s suggestion that Nurses Maksimova and Walton had come to see her in her office to discuss the treatment because they had not heard of the treatment before, it involved the use of bleach, and there was no bath at the nursing home.
68. Nurse Bennett said that, at that time, she had not been aware of the caustic nature of bleach, as she did not herself use bleach in a household context, preferring to use more natural products.⁷⁴
69. Nurse Bennett said that she had never heard of a bleach bath before. She told Nurse Maksimova and Nurse Walton that there was no bleach at the nursing home and it would need to be purchased.⁷⁵ She then went to the supermarket on her way home and purchased the bleach.⁷⁶

Expert Evidence of Professor Dedee Murrell

70. The inquest heard evidence from Professor Dedee Murrell, head of the Department of Dermatology, St George Hospital. It was implicit in Professor Murrell’s evidence that bleach baths comprised of half a cup of bleach to half a bathtub of water was an appropriate treatment for Mrs Pahiva’s MRSA. However her evidence was that it would “*of course*” be wrong if Dr Bear had recommended that a patient be treated with a solution of half bleach to half water because this could cause chemical burns.”⁷⁷

Findings with respect to consultation with Dr Bear on 10 July 2014

71. I am satisfied, on the balance of probabilities, that Dr Bear told Dr Savoulis over the phone, in the presence of Nurse Maksimova and Nurse Walton, that the appropriate treatment for Mrs Pahiva’s skin condition was bleach baths using half a cup of bleach to half a bathtub of water. In making this finding, I have given weight to the oral evidence of Dr Savoulis, and the written record made by Ms Perrins

⁷³ Exhibit 1, tab 19, p. 11-12.

⁷⁴ Transcript of oral evidence of Nurse Bennett on 27 June 2019, p. 29.

⁷⁵ Exhibit 1, tab 19, p. 12.

⁷⁶ Exhibit 1, tab 19, p. 13 – 14.

⁷⁷ Exhibit 1, tab 55, p. 5-6; oral evidence of Professor Murrell on 26 June 2019, p.71.

following her discussion with Dr Savoulis on 16 July 2014. Additionally, I note that the evidence of Dr Savoulis and Ms Perrins is consistent with what was written in Dr Bear's letter to Dr Savoulis and in his instruction sheet on bleach baths.

72. I am also satisfied that it is more likely than not that Dr Bear told Nurses Maksimova and Walton that the appropriate treatment for Mrs Pahiva's skin condition was bleach baths using half a cup of bleach to half a bathtub of water. I agree with counsel assisting's submission that it would defy common sense that a specialist dermatologist would recommend that a solution of half bleach and half water be applied to a patient's skin. I do not doubt that Nurses Maksimova and Walton truthfully hold the belief that Dr Bear told them "*half bleach and half water*" however I find that they are mistaken.
73. I also accept Dr Bear's evidence that, in his own mind, he did not intend to give the nurses instructions to commence administering bleach treatments in the shower, but rather intended to hand the care of Mrs Pahiva back to Dr Savoulis and for Dr Savoulis (either in consultation with Dr Bear or alone) to provide further clarification and guidance to the nurses before the treatment commenced.
74. I find, however, that Dr Bear failed to communicate this intention to the nurses and to Dr Savoulis. In his letter to Dr Savoulis, dated 11 July 2014, he did not expressly state that he expected Dr Savoulis to take any steps prior to the implementation of the treatment, and he did not make any written notes in Mrs Pahiva's nursing home medical record until after she was admitted to Concord Hospital on 16 July 2014. I also find that Dr Bear failed to communicate his intentions to the nurses and to Dr Savoulis verbally during the consultation on 10 July 2014. I consider that, in these circumstances, it was not unreasonable for the nurses and Dr Savoulis to form the impression that Dr Bear intended for the nurses to commence administering the treatment immediately.
75. I also find that it is more likely than not that there was some mention of towels during Dr Bear's consultation on 10 July 2014.

Administration of the bleach treatment on Friday 11 July 2014

Evidence of Nurse Maksimova

76. Nurse Maksimova said that, at the morning handover on Friday 11 July 2014, Nurse Bennett told everyone she had purchased bleach for Mrs Pahiva's treatment and asked the AINs to call the nurses when Mrs Pahiva was ready for her shower.
77. Nurse Maksimova further stated that, later that morning, Nurse Bennett came to her, told her she had already applied the bleach solution, and asked for bandages to put on Mrs Pahiva. Nurse Maksimova says that, around 10 minutes later, she entered the bathroom and saw Nurse Bennett and two AINs with Mrs Pahiva, who was covered with towels and had very loose bandages around her upper body. Nurse Maksimova said Mrs Pahiva did not appear distressed. According to Nurse Maksimova, Nurse Bennett then said it was time for Mrs Pahiva to be dressed, and Nurse Maksimova took some photographs of Mrs Pahiva's skin so the progress of the treatment could be monitored.
78. After the treatment had been completed, Nurse Bennett asked Nurse Maksimova to record in Mrs Pahiva's progress notes where the consumables for the treatment would be kept and how to perform the procedure. She said that Nurse Bennett did not inform her of any matters of concern during the treatment. When Nurse Maksimova saw Mrs Pahiva at lunchtime, she apparently showed no signs of pain or discomfort.⁷⁸
79. In her oral evidence at the inquest, Nurse Maksimova accepted that she was responsible for Mrs Pahiva's care on 10 July 2014 and 11 July 2014, even if she did not perform the treatment herself on 11 July 2014. Her evidence was that, despite this, she did not ask at the handover whether written instructions had been obtained from Dr Bear. She said she did not know what follow up had occurred the previous afternoon, but assumed that Mrs Pahiva's family had been contacted. She did not look at the medical record to see if any written instructions for the treatment had been obtained.⁷⁹
80. I note that Nurse Bennett and both AINs recall Nurse Maksimova being involved in the treatment on 11 July 2019. Nurse Maksimova was asked by counsel assisting whether she participated in the treatment by providing bandages and putting on

⁷⁸ Exhibit 1, tab 25, paragraphs [23] – [27].

⁷⁹ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p 52-53.

gloves and she replied, “I went to check (Mrs Pahiva) after everything was happening.” She did not recall whether there had been any discussion between herself and Nurse Bennett as to how the treatment was to be carried out.⁸⁰

81. Nurse Maksimova was shown an electronic progress note dated 11 July 2014, which stated:

“ (Mrs Pahiva) was seen by Dr Bear yesterday and as per his order (Mrs Pahiva) needs showers with ½ bleach and ½ water (concentration). This morning this was started. To continues (sic) during the weekend. Please use the backed (sic) stored in the filing room, use 1 bottle of beach (sic) and add same amount of warm water. Soak the towels...and wrap (Mrs Pahiva’s) body tightly, every 5 mins pour from that water to make the towels wet and after around 30 min rinse and dry...”

82. Nurse Maksimova agreed that she had entered that progress note into Mrs Pahiva’s records. She said she did not recall where the 30 minute timeframe came from and agreed that it was different from the 20 minute timeframe she had described in her statement. She said she did not check the electronic medical record at the time of making that entry to see whether any instructions from Dr Bear had been added.
83. Nurse Maksimova agreed with counsel assisting’s suggestion that she had taken it upon herself to enter the instructions into the medical record which were then relied on by other nurses to carry out the treatment. She agreed she should have called Dr Bear at that point to clarify the instructions.⁸¹

Evidence of Nurse Bennett

84. Nurse Bennett’s recollection of 11 July 2014, was that the two AINs left the bathroom during the treatment, and that she and Nurse Maksimova wrapped the towels around Mrs Pahiva. She said she didn’t recall who had mixed the solution of bleach and water. She said Nurse Maksimova had retrieved bandages to hold the towels in place around Mrs Pahiva’s shoulders and chest and that, at some point, Nurse Maksimova had to leave the room to attend to other residents, and she remained with Mrs Pahiva who was unsafe on her own. Nurse Bennett says that she wasn’t happy with what was happening and called one of the staff members to

⁸⁰ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p.52-53.

⁸¹ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 56-58.

go and get Nurse Maksimova. She says she said, “*Look, I’m not happy with this...*” and removed the towels and washed Mrs Pahiva down.⁸² She said the towels were around Mrs Pahiva’s body for ten or fifteen minutes.⁸³

85. Nurse Bennett says that she left a note in the handover book for the weekend supervisor explaining the procedure but asking her to give her a call, however because the weekend supervisor called in sick, the handover book stayed locked in Nurse Bennett’s office.⁸⁴ Nurse Bennett said she thought the weekend supervisor would call her and they would discuss Mrs Pahiva’s treatment.⁸⁵
86. In her oral evidence, Nurse Bennett maintained that Nurse Maksimova and two AINs were involved in the treatment of Mrs Pahiva that day. She accepted that, at the time the treatment was carried out, she had no written instructions at all with respect to the treatment and that the medication management policy in force at the time required a written instruction from a doctor. She also agreed that it was the nursing home’s policy to obtain all medications through the pharmacy and to inform the resident’s family of any new treatment.⁸⁶

Evidence of AIN Quillope

87. AIN Vicky Quillope was not called to give oral evidence in the inquest, however she provided a statement to the inquest. AIN Quillope said that Nurse Bennett prepared the bleach solution, by pouring one container of bleach into a bucket and adding water, and then placed the towels into the bucket. Ms Quillope said the AINs helped to squeeze excess solution from the towels and then handed them to Nurses Bennett and Maksimova, who both put the towels on Mrs Pahiva’s body. AIN Quillope said that Nurse Maksimova left the room to get bandages and then returned and put them around Mrs Pahiva. She said she saw some bleach splash onto Nurse Bennett’s black trousers and leave a mark. She also said some bleach splashed her own arm, which stung, although she thought this was due to having eczema, and immediately rinsed her skin. She said her arm did not hurt later. She said either Nurse Bennett or Nurse Maksimova said that bleach needed to be poured onto Mrs Pahiva every five minutes and that the AINs would be called

⁸² Exhibit 1, tab 19, p 15-16.

⁸³ Exhibit 1, tab 19, p. 17.

⁸⁴ Exhibit 1, tab 19, p. 18.

⁸⁵ Exhibit 1, tab 19, p. 18.

⁸⁶ Transcript of Oral Evidence of Nurse Bennett on 27 June 2019, p. 30-32.

when the treatment was finished. She said Nurse Bennett approached the AINs around 30 minutes later and requested that they return to dress Mrs Pahiva.⁸⁷

Evidence of AIN Santillana

88. AIN Joaquin Santillana also did not give oral evidence, but provided a statement to the inquest. He said that Nurses Maksimova and Bennett were both already in the bathroom when he and AIN Quillope brought Mrs Pahiva in in her shower chair. He says he saw Nurse Bennett pour an entire bottle of bleach into a bucket and then fill the bucket until it was nearly full. He said that Nurse Maksimova left the room and returned with bandages. He said dry towels were placed over Mrs Pahiva's body and Nurse Bennett used a plastic cup to pour the bleach solution onto the dry towels until the towels had soaked up the solution and were completely wet. AIN Santillana heard Nurse Bennett say "*we need to pour more of the solution over (Mrs Pahiva) every five minutes or so. I will stay to do this.*" AIN Santillana said he saw the bleach splash onto Nurse Bennett's black trousers and leave a white mark. He also said AIN Quillope's arm was splashed and she said words to the effect of "*ouch, that hurts.*"⁸⁸

Administration of further bleach treatments and admission to Concord Hospital

Bleach treatment on Saturday 12 July 2014

89. Registered Nurse Maria Matriano ("**Nurse Matriano**") was the nurse responsible for Mrs Pahiva's side of the nursing home during the morning shift on Saturday, 12 July 2014. Nurse Matriano states that, at the morning handover, the night shift nurse, Nurse Barker-Broad, handed over that Mrs Pahiva had been seen by Dr Bear, who had ordered daily bleach treatments, and that Care Manager Bennett had commenced the bleach treatments the previous day.⁸⁹
90. Nurse Matriano says she discussed the treatment with Nurse Walton, who was rostered on for the other side of the nursing home that morning (Nurse Walton disputes this). She says she questioned the treatment, but Nurse Walton told her that Dr Bear had said this was the only treatment for the golden staph infection. Nurse Matriano checked Mrs Pahiva's electronic record and read the instructions for the bleach treatment that had been entered by Nurse Maksimova the previous

⁸⁷ Exhibit 1, tab 35, p. 3-4.

⁸⁸ Exhibit 1, tab 36, p. 2-3.

⁸⁹ Exhibit 1, tab 28, paragraphs [4]-[6].

day.⁹⁰ She did not check whether written instructions had been provided by Dr Bear and thought that if the treatment had already been commenced by her colleagues then it must be alright.⁹¹ Nurse Matriano accepted she should have checked the records for Dr Bear's treatment order and that that was part of her training as a registered nurse.⁹²

91. Nurse Matriano states that two AINs prepared the bleach solution using half bleach and half water and administered the treatment to Mrs Pahiva under her instruction. She says she checked the concentration of the solution and watched the AINs wrap the towels around Mrs Pahiva. She said the AINs regularly undertook the "*personal care*" of residents, including showering, and she considered the bleach treatment to be part of that process.⁹³
92. Nurse Walton entered the bathroom at some stage that morning and found Mrs Pahiva, alone, sitting in the shower chair, with towels wrapped around her.⁹⁴
93. Both AINs involved in administering the bleach treatment that day said that they were instructed not to stay with Mrs Pahiva after the towels had been applied but to check on her regularly while they attended to their other tasks. They both said that, because Mrs Pahiva was left unsupervised for periods of time, she was restrained in the shower chair by a safety belt, designed to stop her from falling out of the shower chair.⁹⁵
94. Nurse Matriano said in her oral evidence that she had expected that the AINs would remain with Mrs Pahiva in the bathroom at all times while the bleach treatment was being administered (both on 12 and 13 July 2014).⁹⁶ She conceded, however, that she did not specifically instruct the AINs not to leave Mrs Pahiva alone in the bathroom.⁹⁷
95. Nurse Matriano states that, after approximately 30 minutes, the towels were removed and Mrs Pahiva was rinsed.⁹⁸

⁹⁰ Exhibit 1, tab 28, paragraphs [6]-[8].

⁹¹ Transcript of Oral Evidence of Nurse Matriano on 27 June 2019, p. 40-41.

⁹² Transcript of Oral Evidence of Nurse Matriano on 27 June 2019, p. 41-42.

⁹³ Transcript of Oral Evidence of Nurse Matriano on 27 June 2019, p 44.

⁹⁴ Exhibit 1, tab 39, paragraph [91].

⁹⁵ Exhibit 1, tab 17, paragraphs [43]- [48]; Exhibit 1, tab 29, paragraphs [49]-[50].

⁹⁶ Transcript of Oral Evidence of Nurse Matriano on 27 June 2019, p. 48.

⁹⁷ Transcript of oral evidence of Nurse Matriano on 27 June 2019, p. 43.

⁹⁸ Exhibit 1, tab 28, paragraphs [9]-[10]; transcript of Oral Evidence of Nurse Matriano on 27 June 2019, p.43.

Bleach treatment on Sunday 13 July 2014

96. On 13 July 2014, Nurse Matriano again worked the morning shift and was responsible for Mrs Pahiva's side of the nursing home.⁹⁹ At the morning handover, Nurse Barker-Broad told her she thought Mrs Pahiva's right side looked angry and raw. Nurse Matriano checked Mrs Pahiva's skin, although her view was that it appeared unchanged. The bleach treatment was then applied to Mrs Pahiva in the same manner as the previous day.¹⁰⁰ One of the AINs confirms that Mrs Pahiva was restrained in the shower chair and left unsupervised for periods of time.¹⁰¹
97. After the treatment, Nurse Matriano made an entry in the electronic medical record that noted discolouration or brown blotches to Mrs Pahiva's chest area. She was shivering after the bath and her temperature was 37.5 and 37.2 after Panadol. Nurse Matriano called the Care Manager and "*expressed concern about the bleach treatment, she will re assess resident's skin tomorrow*"¹⁰².
98. A progress note entered by RN Mary George at 9.12pm on 13 July 2014, states: "*Skin appears red in some areas and other areas are like burned skin...*"¹⁰³

Transfer to Hospital

99. The events of 14 July 2014 and 15 July 2014 will be examined in more detail later in these findings.
100. At 7.45pm on 15 July 2014, Nurse Sharon Wilson ("**Nurse Wilson**") reviewed Mrs Pahiva and was shocked by what she saw. She called 000, and Mrs Pahiva was conveyed to St Vincent's Hospital by ambulance, where she was diagnosed with chemical burns.
101. Nurse Wilson later noted in Mrs Pahiva's electronic medical record that, "*patient appeared to be distressed, in pain, with large red areas across her body. Serous ooze emanating. Patient transferred to SVH for further management of chemical burns. Family aware and present*".
102. The following day, on 16 July 2014, Mrs Pahiva was transferred from St Vincent's Hospital to the Burns Unit at Concord Hospital, where she remained until she was discharged back to the nursing home on 1 September 2014.

⁹⁹ Exhibit 1, tab 28, paragraph [12].

¹⁰⁰ Exhibit 1, tab 28, paragraph [12]-[13].

¹⁰¹ Exhibit 1, tab 17, paragraphs [70] and [73]-[74].

¹⁰² Exhibit 1, tab 58 pg 235

¹⁰³ Exhibit 1, tab 58, 2014, p. 235.

Return to Hospital on 9 September 2014

103. Having been discharged back to the nursing home on 1 September 2014, Mrs Pahiva deteriorated on 9 September 2014 and was re-admitted to Concord Hospital. She remained there until her death on 19 September 2014.¹⁰⁴ Mrs Pahiva's daughter, Ms Tutoka, was with Mrs Pahiva when she died.

Findings as to the issues examined in the inquest

The cause of Mrs Pahiva's death

104. A number of experts from different disciplines provided opinions as to Mrs Pahiva's cause of death and the contribution, if any, of the chemical burns caused by the bleach treatments administered between 11 and 13 July 2014.
105. Dr Rianie Van Vuuren, forensic pathologist, conducted an autopsy and prepared an autopsy report dated 23 April 2015 ("**the Autopsy Report**"), based on the material then to hand. In the Autopsy Report, Dr Van Vuuren opined that Mrs Pahiva's cause of death was the combined effects of chemical burn wounds, ischaemic heart disease and chronic obstructive pulmonary disease, on a background of dementia.
106. Concurrent oral evidence was taken at the inquest from Dr Van Vuuren, Professor Rodney Lane, vascular surgeon, and Dr Michael Rudd, a general surgeon specialising in burns. Professor Lane noted that the autopsy revealed, among other things, extensive peripheral vascular disease. He opined that it also indicated gross global cerebral ischaemia or, in other words, the vessels that supplied blood to Mrs Pahiva's brain had become blocked or diseased, resulting in significantly reduced blood flow into her brain on a chronic basis. Professor Lane also observed that Mrs Pahiva's heart had "*extensive vascular disease*".¹⁰⁵
107. Professor Lane opined that Mrs Pahiva's peripheral vascular disease, including the vascular disease within her heart, was a direct cause of death,¹⁰⁶ and that the "*cause and timing of her death*" related to her "*end stage cardiovascular disease*".¹⁰⁷ He also thought that Mrs Pahiva's multiple co-morbidities, including pulmonary embolus, bronchiectasis, emphysema, diabetes and hypertension were contributing factors to her death. Significantly, Professor Lane concluded that the

¹⁰⁴ Exhibit 1, tab 63, p. 3-4

¹⁰⁵ Exhibit 1, tab 53, p. 2.

¹⁰⁶ Exhibit 1, tab 53, p. 2.

¹⁰⁷ Exhibit 1, tab 53, p. 4.

chemical burn wounds had very little contribution to Mrs Pahiva's death, noting that the evidence demonstrated that the burn wounds were improving at the time of death.¹⁰⁸

108. The presence of gangrenous toes was a manifestation of the underlying atheromatous stenosis and occlusion of the peripheral vessels. It was not related to the burn injuries.¹⁰⁹
109. Dr Rudd reviewed the last photographs of Mrs Pahiva's burn injuries, taken on 1 September 2014 (the date of her discharge from Concord Hospital), and opined that the remaining wounds were "*clean and appeared to be diminished in size*" (approximately 2% total body surface area compared to older photographs which were estimated initially to be 15%), although he noted the wounds still required ongoing care.¹¹⁰
110. Dr Rudd also observed that, in the period between Mrs Pahiva re-presenting to Concord Hospital on 9 September 2014 and her death on 19 September 2014, there was no evidence to suggest that the burn wounds had deteriorated or had become a septic source (infective cause) for her deteriorating condition. He accordingly concluded that the primary cause of Mrs Pahiva's death was not infective complications from her burn injuries.¹¹¹
111. Dr Rudd noted in his expert report that burn injuries impose an added metabolic stress on the patient to "*manufacture and fuel*" the healing process, although said he was not able to quantify to what extent this additional metabolic burden may have contributed to Mrs Pahiva's deterioration and death.¹¹²
112. Having had the opportunity to review Professor Lane's report (which was not available at the time of preparing his own report), Dr Rudd said in his oral evidence that he agreed with Professor Lane's assessment that the burns had very little contribution to the death. He opined that it was "*counterintuitive that a process that was continuing to improve would be a cause for...decline*", adding that, in his experience, deaths caused by burns in elderly patients were almost always

¹⁰⁸ Exhibit 1, tab 53, p. 3.

¹⁰⁹ Transcript of oral evidence of Professor Lane on 26 June 2014.

¹¹⁰ Exhibit 1, tab 54, response to question 8.

¹¹¹ Exhibit 1, tab 54, response to question 8.

¹¹² Ibid; transcript of oral evidence of Dr Rudd on 26 June 2019, p. 8.

associated with acute infection, the absence of the same in this case making it less likely that the burns contributed to Mrs Pahiva's death.¹¹³

113. In her oral evidence, Dr Van Vuuren, having had the benefit of reviewing the expert reports of Professor Lane and Dr Rudd (which were not available at the time she prepared the Autopsy Report), said she had revised her opinion as to Mrs Pahiva's cause of death. In light of the fact that the burn wounds were healing, and the absence of sepsis at the time of death, Dr Van Vuuren opined that Mrs Pahiva's direct cause of death was the combined effects of ischaemic heart disease and chronic obstructive pulmonary disease, on a background of chemical burns and dementia.¹¹⁴
114. Professor Joseph Ibrahim, geriatrician, adopted a different approach to that of the panel of experts, opining that Mrs Pahiva's death could be described as premature on the basis that "*a major traumatic injury causing pain, significant physiological stress and requiring prolonged hospitalization does contribute to premature death*".¹¹⁵
115. While I have taken Professor Ibrahim's opinion into account, I prefer the evidence of the panel of experts that Mrs Pahiva's chemical burn wounds had very little, if any, contribution to her death, and were not a direct cause of her death. As submitted by senior counsel for the nursing home, "*there is a certain crucible that occurs*" when a panel of experts have the opportunity to know the views of the other experts and to debate them or reflect on their own initial views and come to a more informed alternative. Further, I note that Professor Ibrahim provided the above opinion in a different context and in circumstances where he had not been directed to examine all of the medical evidence included in the brief of evidence and provide an opinion as to cause of death.
116. I agree with the revised opinion of Dr Van Vuuren that Mrs Pahiva's direct cause of death was the combined effects of ischaemic heart disease and chronic obstructive pulmonary disease, on a background of chemical burns and dementia.

The appropriateness of the bleach treatment prescribed by Dr Bear

117. Following his examination of Mrs Pahiva's skin on 10 July 2014, Dr Bear's preferred diagnosis was bullous impetigo, secondary to the MRSA which had

¹¹³ Transcript of oral evidence of Dr Rudd on 26 June 2019, p. 8.

¹¹⁴ Transcript of oral evidence of Dr Van Vuuren on 26 June 2019, p. 2-3.

¹¹⁵ Exhibit 1, tab 55B, p. 4.

previously been diagnosed by the taking of swabs.¹¹⁶ Dr Bear also considered bullous pemphigoid and pemphigus as differential diagnoses, however thought it unlikely that Mrs Pahiva was suffering from either of those conditions.¹¹⁷ Dr Bear recommended that Mrs Pahiva be treated with bleach baths to try to eradicate the MRSA.

118. On 17 July 2014, following Mrs Pahiva's transfer to Concord Hospital, skin biopsies were performed which established that Mrs Pahiva was, in fact, suffering from bullous pemphigoid.¹¹⁸ Professor Murrell opined that it was most likely that the bullous pemphigoid lesions were colonized with MRSA from the nursing home.¹¹⁹
119. Professor Murrell was not critical of Dr Bear's diagnosis of bullous impetigo, noting that that condition was much more common than bullous pemphigoid, and opining that it would make sense to treat Mrs Pahiva for the more common condition first and, if she didn't respond to the treatment, for further investigations to be undertaken at a hospital.¹²⁰ Professor Murrell expressed the view that it was "not easy" for dermatologists visiting nursing homes to examine the skin well or to perform skin biopsies and other complicated investigations.
120. Professor Murrell opined that treating Mrs Pahiva with bleach baths for her MRSA (assuming the correct dilution had been used) was also appropriate for another reason, stating:

"[E]ven if the diagnosis had been made earlier, it would have been difficult to manage the bullous pemphigoid given that she was colonized with MRSA. Treatment for bullous pemphigoid requires either higher doses of oral prednisone or the whole body to be covered with high potency steroid creams twice daily over many weeks. Both those treatments, whilst helpful for the bullous pemphigoid, would likely have made her at increased risk of septicaemia from the infection and have made her diabetes worse. The mortality from bullous pemphigoid in patients with her comorbidities within one year is extremely high, hence the rationale of trying to eliminate the MRSA first. Using the bleach bath made sense given that if she hadn't responded to that initial treatment, Dr Bear would have been asked to

¹¹⁶ Exhibit 1, tab 56, 2014, p. 40; Exhibit 1, tab 42, p. 2.

¹¹⁷ Exhibit 1, tab 56, 2014, p. 40; Exhibit 1, tab 42, p. 2.

¹¹⁸ Exhibit 1, tab 42, p. 3.

¹¹⁹ Exhibit 1, tab 42, p.4.

¹²⁰ Transcript of oral evidence of Professor Murrell on 26 June 2019, p. 70.

review her again and in that case, initiated further investigations...Bullous pemphigoid is often a pre-terminal illness in patients who suffer from dementia, diabetes and have poor overall function. If pemphigoid is not treated, the patient's blistering and itching extends and can become septic. The correct treatment, whilst it can heal the skin, may lead to the demise of the patient due to complications of the steroids, including worsening of infection, worsening of diabetes, elevation of high blood pressure and strokes."¹²¹

121. Although Professor Murrell thought that bleach baths were an appropriate treatment for Dr Bear to have recommended in the circumstances, this was assuming the correct dilution of bleach to water had been recommended. Her evidence was that it would "of course" be wrong if a dermatologist recommended that a patient be treated with a solution of "half bleach to half water" because this could cause chemical burns.¹²²

122. I accept Professor Murrell's evidence that bleach baths (assuming that a bath had been available and assuming that the correct dilution of bleach had been used) was an appropriate and accepted treatment to try to eradicate Mrs Pahiva's MRSA.

Whether the treatment directions to staff should have been written down, and also provided in writing to the treating GP, by Dr Bear

123. Professor Murrell's evidence was that, in her experience, it was usual for specialists to send letters to referring doctors advising them of the recommended treatment, rather than writing in the medical records.¹²³ She said that the patient's treating doctor then decides whether or not to implement the treatment.¹²⁴ Professor Murrell did say, however, that she has no experience in attending nursing homes to treat patients and that her professional experience was limited to hospitals and in treating patients who attended her private practice for consultations.¹²⁵

124. The inquest also heard evidence from Hazel Bucher, a Nurse Practitioner who was asked to review the material to assist the court from the nurses' perspective. Ms Bucher opined that Dr Bear's written instructions provided to Dr Savoulis of

¹²¹ Exhibit 1, tab 42, p. 6-7.

¹²² Transcript of oral evidence of Professor Murrell on 26 June 2019, p 71.

¹²³ Exhibit 1, tab 55, p. 6-7.

¹²⁴ Oral evidence of Professor Murrell on 26 June 2019, p. 77.

¹²⁵ Oral evidence of Professor Murrell on 26 June 2019, p. 78.

“bleach baths or the equivalent in the shower of ½ a cup of bleach to half a tub of water” did not make sense on their own and would have required further guidance. They did not include instructions as to the duration of treatment or the time for soaking per treatment.¹²⁶

125. Professor Ibrahim opined that, having been told there was no bathtub available, he *“would have expected a longer conversation with more documentation about how one is to administer an unusual treatment in circumstances that were even more out of the ordinary”*.¹²⁷ He further opined that a written treatment order is *“always preferable”* to a verbal order and that, *“[a]s the prescriber of an unusual and rarely used treatment, the onus should be on the medical practitioner, Dr Bear, to ensure the directions provided are clear, documented and understood.”*¹²⁸

126. Ms Bucher’s opinion was that, regardless of whether a prescribed treatment is novel or very ordinary, the treatment directions should be written down.¹²⁹ Ms Bucher noted that Dr Bear’s usual practice when attending a nursing home was to write in the patient’s notes, and that he provided patients who attended his practice with written instructions for bleach baths in the form of an information sheet. Ms Bucher expressed the view that Dr Bear ought to have exercised such due diligence on this occasion also.¹³⁰ This of course assumes an intention on Dr Bear’s part that treatment be commenced.

127. The nursing home had a medication management policy in place in July 2014, which provided as follows:

*“Registered Nurses are responsible for ensuring when the doctor makes changes to the resident’s medications that the doctor records such changes on the medication chart.”*¹³¹

128. In accordance with this policy, Nurse Maksimova was responsible for ensuring that Dr Bear recorded any new treatment on Mrs Pahiva’s medication chart. Professor Ibrahim’s view was that this was *“not a very good policy, because the nurse has no control over the doctor, the doctor is not accountable to the nurse.”*¹³² Professor Ibrahim agreed with counsel assisting that the ideal policy would be to

¹²⁶ Exhibit 1, tab 55A, p. 9.

¹²⁷ Oral evidence of Professor Ibrahim on 28 June 2019, p. 30.

¹²⁸ Exhibit 1, tab 55A, p. 2; transcript of oral evidence of Professor Ibrahim on 28 June 2019, p.28.

¹²⁹ Exhibit 1, tab 55A, p. 2; transcript of oral evidence of Hazel Bucher on 28 June 2019, p. 4.

¹³⁰ Exhibit 1, tab 55A, p. 2.

¹³¹ Exhibit 1, tab 70(N), p. 1.

¹³² Transcript of oral evidence of Professor Ibrahim on 28 June 2019, p. 28.

the effect that any new medication needs to be entered on the medication chart by the prescriber and appropriate instructions provided in writing before treatment will commence.¹³³

129. Professor Murrell ultimately agreed with counsel assisting that, if Dr Bear had, in fact, directed the nurses to implement bleach treatments (rather than transferring care back to Dr Savoulis), *“an information sheet or something in writing would have been better than just verbally telling somebody those instructions”*.¹³⁴
130. As stated above, I accept Dr Bear’s evidence that he did not subjectively intend, on 10 July 2014, to instruct the nurses to commence administering the treatment in the shower. Notwithstanding this, Dr Bear conceded that it was an oversight not to make a record in Mrs Pahiva’s nursing home medical records on 10 July 2014.
131. I find that it was a significant failing of Dr Bear that he did not clearly and unambiguously record in the nursing home records that the bleach treatment was not to be commenced until further clarification had been provided. I also consider that Dr Bear should have told this to the nurses and Dr Savoulis verbally and that he should have made this clear in his letter to Dr Savoulis. Had these things been done, what occurred next could have been avoided.
132. Additionally, I consider that the onus was on Dr Bear, as the specialist dermatologist, to provide subsequent clarification in writing as to the correct dilution of bleach and as to an appropriate method of administering the treatment in the shower. Having discovered that the nursing home did not have a bath and that his preferred treatment of bleach baths could not be administered to Mrs Pahiva, it was Dr Bear’s responsibility to make a clear recommendation as to precisely what ought to occur by way of treatment in the alternative. If this was not possible on the date of the consultation, this should have been done as soon as practicable by way of follow up. The recommendation contained in the letter to Dr Savoulis of *“bleach baths or the equivalent in the shower of half a cup of bleach to half a tub of bathwater...you should feel free to contact me Tom if you are having trouble”* was not sufficient as it did not provide any instructions as to the correct dilution of bleach for use in the shower or as to the method of administering the treatment in the shower.

¹³³ Transcript of oral evidence of Professor Ibrahim on 28 June 2019, p. 29-30.

¹³⁴ Transcript of oral evidence of Professor Murrell on 26 June 2014, p. 82.

Whether staff at the nursing home should have checked the instructions, having regard to their mistaken belief as to the ratio of bleach to water and the caustic nature of undiluted bleach

133. Nurses Walton, Maksimova, Bennett and Matriano all agreed that a bleach treatment was unusual in the context of residential aged care, and said that they had never come across it before.¹³⁵ Further, Nurses Walton and Maksimova each gave evidence to the effect that they had concerns about the treatment from the outset and they both understood that bleach was a corrosive chemical. Additionally, Nurse Maksimova gave evidence to the effect that she was concerned that Dr Bear had not made a note in Mrs Pahiva's file and that this was one of the reasons why she went to see Nurse Bennett before leaving for the day.

134. The following exchange occurred between counsel assisting and Nurse Walton:¹³⁶

Q. ...was it your understanding at that time that bleach was a corrosive chemical?

A. Yes.

Q. If used in undiluted form?

A. Yes.

...

Q. ...how did you know that bleach was a corrosive chemical?

A. Well I know bleach burns, I've used it before in the home situation, so I couldn't understand why any resident would be treated with that substance.

Q. So that was front of mind for you at the time?

A. Yes.

Q. Did that cause you concern?

A. Yes.

Q. Why then didn't you query this issue with Dr Bear?

A. I did, I did pose that question.

Q. How do you say you queried it?

¹³⁵ Transcript of oral evidence of Nurse Walton on 26 June 2019, pg 21; exhibit 1, tab 19, p.12; transcript of oral evidence of Nurse Bennett on 27 June 2019, p. 32; transcript of oral evidence of Nurse Maksimova 26 June 2019, pg 49; Transcript of oral evidence of Nurse Matriano on 27 June 2019, p. 40.

¹³⁶ Transcript of oral evidence of Nurse Walton on 25 June 2019, p. 76-77.

A...

Q. No, I am asking you how do you say you queried it?

A. I said to Dr Bear, "Can we treat her with oral treatments?"

...

Q. You said that you remember that Nurse Petya, that's Maksimova, asked won't it burn her skin?

A. Yes.

Q. ...your recollection is that Dr Bear replied, "Yes it will burn the skin yes that is the point"?

A. That was his answer, yes.

Q. So from that answer as you heard it, and recalled it, were you then not assuming that the treatment would cause burns to the skin of Mrs Pahiva?

A. At that time Dr Bear was asked to come in because he was a specialist dermatologist, so I believe that he was the correct person to do the diagnosis, so that's probably why I didn't question him effectively.,

Q. But at the time you were being told something that apparently indicated that Mrs Pahiva would suffer burns to her skin as a result of the treatment do you agree?

A. Yes.

Q. And yet you didn't further pursue or query with Dr Bear how on earth this could be appropriate?

A. Yes that's to my regret I should have been more effective and more insistent that this was discussed more fully.

...

Q. ...you stayed there in the background because you were interested to know what was going to happen next...?

A. Yes that's correct yes. Nurse Petya had the consultation.

Q. What do you mean you were interested to know what was going to happen next?

A. Yes I can't explain why I said that now.

Q. Well was this the case that your interest was not only provoked by this but you were concerned about what was being discussed is that right?

A. I was always concerned, yes.

The following exchange occurred between counsel assisting and Nurse Maksimova:

Q: After he's [Dr Bear] left you've come back to the nurses' station, after your medication round, and found that he hasn't written in the file?

A: Yes.

Q: What do you do?

A: I was worried and I went to...Helena's office...and I raised my concerns that Dr Bear was there and he prescribed this treatment which was very unusual, but he didn't write in the notes..."

...

Q: You don't remember what Nurse Bennett said in that conversation, but you were concerned this was an unusual treatment and you didn't have any notes?

A: Yes.

...

Q: So far as this treatment was concerned, did you say something to Dr Bear along the lines of, "Won't it burn her skin?"

A. Yes.

Q: Why did you say that?

A: I was quite surprised and shocked of – shocked is probably very strong saying, but I'm really surprised of the treatment and because I was taking care of Epe for quite a long time with her skin conditions and I was quite happy with the little success we had previously, when I heard this I directly associate that that's going to be damage to her skin again, going backwards, and I was surprised and I ask why and – yeah.

Q: Was it the fact that bleach was being used that made you think that there might be damage to her skin?

A: Yes.

Q: So it wasn't the concentration of bleach, it was the fact of bleach being used?

A: Yes.

...

Q: *Do I take it you were worried about the use of bleach just because you knew something about bleach being caustic? You know the word caustic? That it could*

–

A: Yes.

Q: *In direct concentration, without dilution, it could burn the skin?*

A: Yeah.

Q: *That was your understanding?*

A: Yes.

Q: *If you say that what you were hearing was “half and half”, wouldn’t that suggest a real risk of burning the skin?*

A: *Yes, that’s why I asked the question, “Is that going – that’s going to burn the skin”.*

Q: *Did you raise that with Nurse Bennett?*

A: *I repeat to Nurse Bennett the whole of conversation between us, yes, I, I, believe I repeat that to her.”¹³⁷*

135. Nurse Walton said that she did not take further steps to satisfy herself that the treatment was appropriate because Dr Bear was the specialist.¹³⁸ Nurse Maksimova assumed, but did not check prior to the administration of the treatment on 11 July 2014, that further clarification had been sought from Dr Bear.¹³⁹ Nurse Matriano said that, on 12 July 2014, she relied on the instructions entered by Nurse Maksimova in the electronic progress notes and did not check whether there was a written treatment order from Dr Bear prior to commencing the bleach treatment.¹⁴⁰

136. None of the nurses involved in administering the treatment contacted Dr Bear or Dr Savoulis to seek clarification about the treatment.

¹³⁷ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 46-47 and 50-52.

¹³⁸ Transcript of oral evidence of Nurse Walton on 25 June 2019, p. 77.

¹³⁹ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 52-53.

¹⁴⁰ Transcript of evidence of Nurse Matriano on 27 June 2019, p. 41.

137. In other words, despite the novelty of the treatment, the concerns of some of the nurses about administering to Mrs Pahiva a treatment involving bleach, and the absence of any written instructions from Dr Bear, none of the nurses sought clarification from Dr Bear or Dr Savoulis or insisted that a written treatment order be provided prior to commencing the treatment.
138. Nurse Bennett and Nurse Matriano conceded that they should have ensured there was a written treatment order from Dr Bear before commencing the bleach treatment.¹⁴¹
139. Nurse Bennett also conceded that the procedure in place at the nurse home was that medications were to be obtained through the pharmacy and that she should have followed this procedure to obtain the bleach, rather than purchasing it from the supermarket.¹⁴²
140. When Ms Perrins contacted the pharmacy during her investigation and asked for information about bleach baths, including how they are administered and what the dilution is, the pharmacy sent the information through to her and advised that *“the bleach is usually ordered through them with a Doctor’s instruction”*.¹⁴³
141. Professor Murrell was critical of the registered nurses for not seeking clarification prior to administering the bleach treatment. She opined that the treatment should not have been administered to Mrs Pahiva without Dr Bear or Dr Savoulis *“writing down exactly how it should be given in the medication chart”*. She said that, if Dr Bear had neglected to write in the records, the nurses should have faxed him the medication chart so he could fill it in and return it.¹⁴⁴
142. Ms Bucher said that bleach treatments were novel in aged care nursing and, accordingly, it was essential for the nurses, in the absence of written instructions from Dr Bear, to seek further clarification and guidance about the treatment.¹⁴⁵ Ms Bucher also said that registered nurses are responsible for every treatment order they follow and, in circumstances where the nurses had doubt or concern,

¹⁴¹ Transcript of oral evidence of Nurse Bennett on 27 June 2019, p. 31 and 34; transcript of oral evidence of Nurse Matriano on 27 June 2019, p. 41-42.

¹⁴² Transcript of oral evidence of Nurse Bennett on 27 June 2019, p. 30.

¹⁴³ Exhibit 1, tab 32, p. 3.

¹⁴⁴ Transcript of oral evidence of Professor Murrell on 26 June 2019, p. 81; exhibit 1, tab 55, p. 4.

¹⁴⁵ Transcript of oral evidence of Hazel Bucher on 28 June 2019, p. 6.

the treatment should have been delayed until they had sought clarification and were satisfied that the treatment was appropriate.¹⁴⁶

143. The Medication Management policy in place at the nursing home in July 2014, stated as follows:

“If a Registered Nurse is concerned about a particular medication, the dose ordered or any other aspect of the doctor’s orders the Registered Nurse must check with the doctor rather than blindly follow instructions.”¹⁴⁷

144. I do not doubt that everyone involved in Mrs Pahiva’s treatment was acting from the best of intentions, and that the staff were most likely concerned to implement the treatment as soon as possible, given that no previous treatments had succeeded in resolving Mrs Pahiva’s skin condition over a number of months.

145. Notwithstanding this, the evidence leaves no room for doubt that the registered nurses, as the practitioners who would be implementing the treatment, had a responsibility to ensure they were administering it correctly and the only way to ensure this was to have written instructions from a doctor. The evidence demonstrates that there was a wholesale failure by the nurses involved in Mrs Pahiva’s care, to discharge this responsibility.

146. The registered nurses should have checked the instructions and should not have commenced the treatment until clarification as to the formula for the bleach and water solution and as to the method of administering the solution to Mrs Pahiva in the shower had been provided by way of a written treatment order. Had this basic procedure been followed the events subject of this inquest could have been avoided.

Whether the burns suffered by Ms Pahiva should have been suspected as such by staff at the Home and/or Dr Savoulis earlier than the point at which ambulance personnel were contacted

Evidence of Dr Rudd

147. Photographs of Mrs Pahiva’s skin were taken by staff at the nursing home on 11 July 2014, following the first bleach treatment, and on 15 July 2014, following the third bleach treatment. A further set of photographs, undated, were taken by a

¹⁴⁶ Transcript of oral evidence of Hazel Bucher on 28 June 2019, p. 5; transcript of oral evidence of Hazel Bucher on 28 June 2019, p. 8-9.

¹⁴⁷ Exhibit 1, tab 70(N), p. 2.

doctor at St Vincent's Hospital on 15 July 2014.¹⁴⁸ These photographs form part of the coronial brief of evidence,¹⁴⁹ and Dr Rudd was briefed with them.

148. Dr Rudd's evidence was that it is in the nature of burn injuries that their appearance evolves over a period of several days; the peak change in appearance occurring about 72 hours after the initial burn injury is sustained. He said that, for this reason, without having seen Mrs Pahiva's burns for himself, it is *"impossible to predict what a clinician may have seen at a particular point in time"* except to say that the appearance of the burn injuries would have progressed to look more obviously abnormal over time.¹⁵⁰
149. Dr Rudd also said that, without seeing the affected skin before and after the individual bleach treatments, it was not possible to determine which treatments caused burns to specific areas of skin.¹⁵¹
150. Dr Rudd could not see any evidence of burn injury in the photographs taken of Mrs Pahiva's skin on 11 July 2014, following the first treatment.¹⁵² He said, based on the appearance of the wounds in the photographs taken in hospital, Mrs Pahiva's skin would have progressed from, *"normal to erythema (redness) to erythema with blistering of the skin to open moist red wounds transuding (weeping) a clear slightly yellow fluid some time between the 11th and 16th of July."*
151. I note Dr Rudd's evidence that, *"[w]ritten records of descriptions of burn appearance are notoriously inaccurate (even amongst trained clinicians)"* and that for this reason, in Dr Rudd's specialist burns unit, all incoming referrals include photographs.¹⁵³
152. Dr Rudd said that over time, Mrs Pahiva's injuries would have become *"more obvious to both the trained and untrained eye"* and he opined that *"[t]he injuries were obvious in the photographs dated 15 July 2014"*.¹⁵⁴

Sunday 13 July 2014

153. In the early hours of Sunday 13 July 2014, Nurse Barker-Broad, who had worked the night shift, recorded that Mrs Pahiva's skin looked *"more angry and raw than*

¹⁴⁸ Exhibit 1, tab 13, p. 6.

¹⁴⁹ Exhibit 1, tab 60 and tab 52.

¹⁵⁰ Exhibit 1, tab 54, p. 1-2.

¹⁵¹ Exhibit 1, tab 54, p. 3.

¹⁵² Exhibit 1, tab 54, p. 2.

¹⁵³ Exhibit 1, tab 54, p. 1.

¹⁵⁴ Exhibit 1, tab 54, p. 3.

previously observed” and informed Nurse Matriano of this at the morning handover.¹⁵⁵ Nurse Matriano checked Mrs Pahiva’s skin, did not think there was any change from the previous day and decided to proceed with the bleach treatment.¹⁵⁶

154. In the lounge area, at around 10am, Nurse Matriano noticed that Mrs Pahiva was shivering. She took her temperature, which was elevated at approximately 37.5 degrees Celsius, and went down to 37.2 degrees after Mrs Pahiva was given Panadol.¹⁵⁷

155. At around 1pm, Nurse Matriano checked Mrs Pahiva’s electronic medical record and her paper progress notes in an attempt to locate Dr Bear’s instructions. She then rang Nurse Bennett to inform her that she could not find any entry by Dr Bear and to report Mrs Pahiva’s episode of shivering and her temperature earlier that day.¹⁵⁸ Nurse Matriano says that, during this phone call, Nurse Bennett told her to cease the bleach treatment until she had re-assessed Mrs Pahiva’s skin the following day, and that she (Nurse Bennett) would call Dr Bear.¹⁵⁹

156. Nurse Bennett recalls this phone conversation differently and said in her oral evidence that Nurse Matriano had told her she had given Mrs Pahiva Panadol but that Mrs Pahiva still had a slight temperature, and that she had then asked Nurse Matriano to get the after-hours doctor to come and review Mrs Pahiva.¹⁶⁰

157. The electronic medical record for 13 July 2014 includes a note from Nurse Matriano that Mrs Pahiva’s skin had brown blotches and she had a temperature. It states, “*called care manager and expressed concern about the bleach treatment, she will reassess resident’s skin condition tomorrow.*”

Dr Savoulis’ Consultation on Monday 14 July 2014

158. On Monday 14 July 2014 at 5.57am Nurse Barker Broad recorded in the electronic progress notes that Mrs Pahiva’s right side looked “*very raw*”.¹⁶¹ Nurse Maksimova also thought that Mrs Pahiva’s skin looked more irritated than on the Friday. She says she asked Nurse Pedrova to ring Dr Savoulis and to inform him that

¹⁵⁵ Exhibit 1, tab 58, p. 234-235 and exhibit 1, tab 28, p. 5.

¹⁵⁶ Exhibit 1, tab 28, p. 5.

¹⁵⁷ Exhibit 1, tab 58, p. 235; exhibit 1, tab 28, paragraph [15].

¹⁵⁸ Exhibit 1, tab 28, paragraph [18].

¹⁵⁹ Exhibit 1, tab 28, p. 6-7.

¹⁶⁰ Transcript of oral evidence of Nurse Bennett on 27 June 2019, p. 33.

¹⁶¹ Exhibit 1, tab 58, pg 236.

Mrs Pahiva needed to be seen that day. Nurse Bennett also says that at the morning handover she asked for Dr Savoulis to be rung. She made an entry in the electronic medical record at 8.54am "*cease current treatment for skin condition till resident is assessed by LMO*"¹⁶².

159. At 9.21pm, Dr Savoulis attended the nursing home and reviewed Mrs Pahiva. He noted some redness in the treated areas, but thought that the skin lesions appeared to be healing, and instructed the nurses to "*continue same treatment*".¹⁶³ Dr Savoulis said Mrs Pahiva's skin did not look "*raw*" when he examined it and he had thought that a little bit of redness might be an expected side effect of the treatment he understood had been ordered by Dr Bear.¹⁶⁴ Dr Savoulis accepted that he assumed responsibility for Mrs Pahiva's care from this point onwards.¹⁶⁵

Dr Savoulis' Consultation on Tuesday 15 July 2014

160. The following morning at 5.09am, Nurse Barker Broad again recorded in the electronic progress notes that Mrs Pahiva's skin "*remains raw in some places*".¹⁶⁶
161. At 12.03pm, Nurse Bennett reviewed Mrs Pahiva and noted "*remains raw in the majority of her lower torso and buttock areas. LMO informed by me that current treatment for her skin will be discontinued for the comfort of the resident. LMO will be in later today to review the resident. Epe is comfortable in bed*". AIN Ma Tagle noticed that day that Mrs Pahiva was frowning, which she had been taught was sometimes a sign of pain.
162. At some point prior to 2pm,¹⁶⁷ Dr Savoulis again reviewed Mrs Pahiva, and made a handwritten record in her progress notes, which stated, "*skin excoriated in areas previously affected by skin blisters. Solugel twice per day.*"¹⁶⁸ Dr Savoulis gave oral evidence to the effect that, by "*excoriated*", he had meant that the skin appeared to be broken in places. He said that the skin was more irritated than the day before.¹⁶⁹
163. By the time Nurse Wilson examined Mrs Pahiva at either 7.45pm or 8.45pm on 15 July 2014, the wounds on her skin had progressed to the point where they were apparently weeping. Nurse Wilson recorded that there were "*large, red areas*

¹⁶² Exhibit 1, tab 58, pg 236

¹⁶³ Exhibit 1, tab 48, paragraph [36]; Exhibit 1, tab 59, p.10.

¹⁶⁴ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 8-9.

¹⁶⁵ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 9.

¹⁶⁶ Exhibit 1, tab 58, 237.

¹⁶⁷ Exhibit 1, tab 37, p. 4.

¹⁶⁸ Exhibit 1, tab 59, p. 14; transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 10.

¹⁶⁹ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 11 and 17.

across her body” with “serous ooze” and that Mrs Pahiva was distressed and appeared to be in pain. Ms Wilson was concerned enough to call an ambulance.¹⁷⁰

164. In his oral evidence, Dr Savoulis indicated that he had formed the belief when he visited Mrs Pahiva on 15 July 2014 (at some point prior to 2pm¹⁷¹) that she had suffered chemical burns. The following exchange occurred between the family’s legal representative and Dr Savoulis:¹⁷²

Q: At the point in time that you reviewed Epenesa at the home on the Tuesday did at any stage it occur to you that what you were observing was a chemical burn?

A: Yes.

Q: Why did you form that view?

A: Because the skin was excoriated.

Q: What does excoriated mean?

A: It was broken in areas. The skin was broken.

Q: Was part of that view formed by your knowledge that there had in some form been an application of a bleach treatment?

A: Yes.

Q: So, why at that point did you not call an ambulance?

A: ‘Cause I thought by stopping the treatment and by applying the Solugel we would provide some treatment, a proper treatment, the patient would have gradually recovered from, from that.

Q: Did you see skin that was affected across the patient’s abdomen?

A: It was the abdomen, yes.

Q: Did you see the bottom of her legs?

A: I can’t remember.

Q: Did you see the top of her arms?

A: I can’t remember.

¹⁷⁰ Exhibit 1, tab 58, p. 238; exhibit 1, tab 40, p. 3.

¹⁷¹ Exhibit 1, tab 37, p. 4.

¹⁷² Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 17

Q: At that point what was your plan for the patient?

A: My plan was to apply what I said and see the (sic) issue will respond. What will be – respond to that action (sic).

...

Additionally, the following exchange occurred between counsel assisting and Dr Savoulis:¹⁷³

Q: During questions asked by Ms Cooper on behalf of the family you indicated that the reason you had prescribed Solugel was because you believed that Mrs Pahiva was suffering from a chemical burn. Do you remember saying that?

A: Yes.

Q: And that was a belief you formed at the time?

A: Yes.

Q: You were aware, were you not, that Mrs Pahiva suffered from a number of comorbidities?

A: I was aware, yes.

Q: Including chronic obstructive pulmonary disease?

A: Yes.

Q: And diabetes?

A: Yes.

Q: Anything else?

A: Dementia.

Q: Yes? She was 87 years old?

A: Yes.

Q: Did it not occur to you that an 87 year old patient suffering those comorbidities might take longer, her skin might take longer to heal than a younger healthier patient?

A: Yes.

¹⁷³ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 23.

Q: Did it not mandate in the circumstances of calling an ambulance and having her treated by a burns specialist?

A: Possibly, yes.

Q: Is that a hindsight answer or was that something that you gave thought to at the time?

A: I can't remember what my thoughts were at the time.

165. Dr Savoulis' statement dated 14 May 2015 did not suggest that he had thought on 15 July 2014 that Mrs Pahiva had suffered a chemical burn.
166. In his oral evidence, Dr Savoulis said that he had thought that, by instructing the nurses to stop the treatment, and directing them to apply Solugel, Mrs Pahiva would gradually recover.¹⁷⁴
167. Although Dr Savoulis was certain that he verbally instructed the nurses to cease the bleach treatment,¹⁷⁵ this instruction does not appear in the handwritten record made by Dr Savoulis or in the electronic record entered by Nurse Connie Tagle.¹⁷⁶ Additionally, it appears that Dr Savoulis did not report to anyone at the nursing home that he believed Mrs Pahiva had suffered burns as a result of the bleach treatment.
168. Dr Savoulis agreed, with hindsight, that he should possibly have organized for an ambulance to transfer Mrs Pahiva to hospital, to investigate the burns.¹⁷⁷ He indicated, however, that at that point he had had no prior experience dealing with chemical burns and was not aware that they could become worse over time.¹⁷⁸
169. At the time of reviewing Mrs Pahiva on 14 and 15 July 2014, Dr Savoulis was not aware that she had been treated with a solution of 50% water and 50% bleach and had at all times assumed that she had been treated with the equivalent of half a cup of bleach to half a bathtub of water. He said that he only became aware of the dilution in fact used after Mrs Pahiva was admitted to hospital.¹⁷⁹
170. Counsel assisting has submitted that Dr Savoulis could be criticised on the following three bases: first, that Mrs Pahiva was 87 years old, had significant co-

¹⁷⁴ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 17.

¹⁷⁵ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 18 and 25.

¹⁷⁶ Exhibit 1, tab 59, page 14; Exhibit 1, tab 58, p. 238.

¹⁷⁷ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p 18-19.

¹⁷⁸ Transcript of oral evidence of Dr Savoulis on 27 June 2019, p. 25-26.

¹⁷⁹ Exhibit 1, tab 48, paragraph [38].

morbidities and could not communicate, at least verbally, any distress. Accordingly, even though Dr Savoulis did not expect the burns to become progressively worse, Mrs Pahiva should have been transferred to hospital at that point, so the suspected burns could be reviewed by someone more experienced. Second, by not telling the nursing home that he suspected Mrs Pahiva had suffered a chemical burn, he deprived the home of making its own decision with respect to her care at that point. Third, Dr Savoulis did not write an instruction in the progress notes to cease the bleach treatments.

171. Counsel for Dr Savoulis noted that there was no objective evidence as to what Mrs Pahiva's burn wounds looked like at the precise point in time that Dr Savoulis examined them on 15 July 2014. It was submitted on behalf of Dr Savoulis that the progress notes were consistent with Mrs Pahiva's wounds having progressed significantly between the time Dr Savoulis examined them at around 12.35pm and the time Nurse Wilson called an ambulance. In particular, it was submitted that Ms Wilson's progress note was the first indication in the records that Mrs Pahiva was distressed and the first indication that wounds had been observed of that level of seriousness.
172. Additionally, counsel for Dr Savoulis submitted that an explanation for his failure to record an instruction to cease the bleach treatment, could be that Nurse Bennett had told him during their telephone call earlier that day that the treatment had been discontinued.
173. With respect to Dr Savoulis' oral evidence that he recognized that Mrs Pahiva had suffered a chemical burn, counsel for Dr Savoulis submitted that I should interpret this evidence as having been given with the benefit of hindsight, given that at the relevant time he had no experience of chemical burns, and was not aware of the concentration of bleach that had been administered to Mrs Pahiva. It was also submitted that caution should be exercised in the level of criticism directed at Dr Savoulis due to, among other things, the absence of any expert evidence with respect to his management of Mrs Pahiva on 15 July 2014.

Findings

174. In light of Dr Rudd's evidence that, in the absence of photographs, it was impossible to say what a clinician may have seen at any particular point in time, I am unable to make a finding that staff at the nursing home should have suspected burn wounds prior to 15 July 2014.

175. While it is clear that clinicians at the nursing home had concerns about Mrs Pahiva from 13 July 2014 onwards, those concerns were acted upon by telephoning Dr Savoulis on 14 July 2014 and asking him to attend the nursing home to see Mrs Pahiva. The fact that Dr Savoulis attended the nursing home on 14 July 2014, examined Mrs Pahiva, noted some redness only, and left instructions to “*continue same treatment*”, suggests that the wounds at that stage did not have the appearance they had when Nurse Wilson examined them the following day. There is no suggestion that Dr Savoulis recognized the wounds as chemical burns on 14 July 2014. It was reasonable for the nurses to rely on the professional opinion of Dr Savoulis on that date that no urgent action needed to be taken with respect to Mrs Pahiva.
176. Although I have taken into account the submissions of counsel for Dr Savoulis, I consider that Dr Savoulis’ oral evidence was to the effect that he formed the belief on 15 July 2014 that Mrs Pahiva was suffering from a chemical burn.
177. Having taken into consideration that Dr Savoulis was unfamiliar with chemical burns, did not know that they get progressively worse, assumed at all times that Mrs Pahiva had been treated with the correct dilution of bleach, and the absence of evidence that Mrs Pahiva was distressed at the time of the consultation, I nevertheless find that Dr Savoulis should have made arrangements for Mrs Pahiva to be transferred to hospital at the time he examined her on 15 July 2014, for the reasons submitted by counsel assisting.
178. I also find that Dr Savoulis should have told the nursing home he suspected a chemical burn, and should have made a written note in the nursing home records instructing the staff to cease the bleach treatments.

Whether the substitution of towels and a shower, in circumstances where the accepted treatment was a bleach bath, was appropriate

179. There was not a great deal of evidence in the inquest as to whether the towel method used was an appropriate substitute for a bleach bath.
180. Professor Murrell said that, with bleach baths (of the correct dilution), in order to eradicate the MRSA the patient would need to have the solution in contact with their skin for a period of time. The accepted timeframe for soaking in the bath was anywhere from 10 minutes to half an hour, depending on what was comfortable for the patient.

181. Professor Murrell expressed the view that, in the absence of a bath, she could see the logic in using towels soaked in the solution to maintain contact of the solution with the skin. She was unable to find any published studies that touched on the use of towels soaked in a bleach and water solution as an alternative to a bleach bath, or as to the timeframe for which towels soaked in the solution could safely be applied. She opined, however, that if the correct dilution was used and the patient wasn't complaining of pain, *"it should be ok"*.¹⁸⁰
182. Ms Bucher's evidence was that, in her experience in aged care, towels were used in some treatments to maintain continued contact with the skin, such as, for example, with prontosan soaks when providing skin and wound care for lower leg venous ulcers.¹⁸¹
183. As already stated, I have found that the treatment should not have been administered to Mrs Pahiva in the absence of a written treatment direction from a doctor as to, among other things, the method by which the treatment was to be administered. I.e, the treatment should not have gone ahead by substituting towels or any other method unless a doctor provided specific instructions to do so. That said, there is no evidence to suggest that the use of towels, assuming the correct dilution of bleach had been used and a written treatment direction had been provided, would have been inappropriate.

Whether there was a failure by the nursing home to inform and/or seek appropriate guardian/carer consent for the bleach treatment

184. Mrs Pahiva's daughters, Ms Sasai Pahiva and Ms Epesofimo Pahiva, were both listed as contact persons in Mrs Pahiva's nursing home records, with Ms Sasai Pahiva listed as the *"primary contact"*.¹⁸² Both stated that the first time they heard anything about the bleach treatment was when they arrived at St Vincent's Hospital on 15 July 2014.¹⁸³
185. Nurse Bennett and Nurse Maksimova accepted in their oral evidence that they did not contact anyone in Mrs Pahiva's family regarding the bleach treatment prior to its administration.¹⁸⁴ Additionally, the nursing home made a broad concession that

¹⁸⁰ Transcript of oral evidence of Professor Murrell on 26 June 2019.

¹⁸¹ Exhibit 1, tab 55A, p. 9.

¹⁸² Exhibit 1, tab 56, 2014, p. 2.

¹⁸³ Exhibit 1, tab 14, p. 4; exhibit 1, tab 13, p. 7.

¹⁸⁴ Transcript of oral evidence of Nurse Maksimova on 26 June 2019, p. 55-56; Transcript of oral evidence of Nurse Bennett on 27 June 2019, p.31 and 33.

none of its staff contacted Ms Sasai Pahiva or Ms Epesofimo Pahiva to seek their consent to administer the bleach treatment.

186. Nurse Matriano recalled mentioning to Ms Epesofimo Pahiva, during her visit with Mrs Pahiva on 13 July 2014, that her mother was undergoing skin treatments, but could not recall whether she used the word “*bleach*”. I note that, by that stage, at least two and most likely three, bleach treatments had already been administered to Mrs Pahiva.¹⁸⁵
187. I accept that the first occasion on which Mrs Pahiva’s family heard anything about the bleach treatment was at St Vincent’s hospital on 15 July 2014, after Mrs Pahiva had presented there with chemical burns.
188. Ms Bucher’s evidence was that, where a resident lacks capacity to consent to a proposed treatment, she would expect the listed ‘*first contact*’ person in the resident’s notes (Ms Sasai Pahiva) to be informed about the proposed treatment. Ms Bucher noted that, “*Had that discussion occurred with the full details and the family been inquisitive more questions could have been raised by the family and the opportunity to rethink the instructions arise.*”¹⁸⁶
189. Professor Ibrahim’s evidence was that Mrs Pahiva’s family ought to have been told that the dermatologist had recommended bleach treatments prior to staff at the nursing home commencing the treatment, because, first, Mrs Pahiva lacked the capacity to consent, second, informed consent is a core part of clinical practice, and third, the proposed treatment was unusual¹⁸⁷ (at least in an aged care setting).
190. The nursing home’s policy at the time provided that a resident’s family was to be contacted whenever there was a change of treatment for the resident or a new medication ordered for the resident. The registered nurse responsible for the resident was required to make the phone call to the family before their shift ended or, if that was impossible, they were expected to handover to the registered nurse on the next shift that the family needed to be called and to make a note in the progress notes outlining the circumstances.¹⁸⁸

¹⁸⁵ Transcript of oral evidence of Nurse Matriano on 27 June 2019, p. 45; exhibit 1, tab 28, p. 6.

¹⁸⁶ Exhibit 1, tab 55A, p. 9.

¹⁸⁷ Exhibit 1, tab 55B, p. 6.

¹⁸⁸ Exhibit 1, tab 70(A); transcript of oral evidence of Gaye Perrins on 27 June 2019, p. 70-71.

191. It was submitted on behalf of Mrs Pahiva's family that, if, at any stage, it had been raised with them that there was going to be a treatment involving bleach, it would have raised a red flag and they would have made further enquiries.¹⁸⁹
192. Given that Mrs Pahiva lacked capacity, and that Nurse Maksimova believed that Dr Bear had instructed the nurses to administer a new treatment to Mrs Pahiva, Nurse Maksimova should have phoned Mrs Pahiva's primary contact, Ms Sasai Pahiva, to seek consent to carry out the treatment. In the event that she did not have time to do so before her shift ended on 10 July 2014, she should have handed over this task to the registered nurse on the next shift as outlined by Ms Perrins.
193. A further issue that arose from the evidence was that Mrs Pahiva was restrained in her shower chair with a safety belt and left unsupervised in the bathroom for periods of time during the second and third bleach treatments. Ms Fleur Hannen, a consultant engaged by the nursing home to conduct an investigation following the discovery of Mrs Pahiva's chemical burns, identified that this use of restraint had occurred without appropriate restraint authorisation.¹⁹⁰
194. Ms Hannen was also critical of Mrs Pahiva, who was at "high risk of falls", being left unsupervised in the bathroom.¹⁹¹
195. Professor Ibrahim opined that Mrs Pahiva should not have been restrained without consent and should not have been left alone in the bathroom while restrained.¹⁹²
196. The nursing home's policy at the time, titled "Restraint of Residents", provided relevantly, as follows: *"Except in an emergency, a resident who has a person responsible must not be mechanically...restrained unless the resident's person responsible has been consulted and the restraint has been authorized by a doctor."*¹⁹³
197. I find that Mrs Pahiva should not have been restrained in the shower chair during the second and third treatments without prior consultation with Ms Sasai Pahiva and without the authorization of a doctor.

¹⁸⁹ Oral submissions on behalf of the family, transcript dated 28 June 2019, p. 54.

¹⁹⁰ Exhibit 1, tab 70(II), p. 15.

¹⁹¹ Exhibit 1, tab 70(II), p. 15.

¹⁹² Transcript of oral evidence of Professor Ibrahim on 28 June 2019, p. 31-32.

¹⁹³ Exhibit 1, tab 70(HH), p. 2.

Whether the direction to treat and the Home's bleach treatment itself was adequately documented and, once treatment had commenced, photographed;

198. As I have already stated above, Dr Bear should have made a clear and unambiguous note in the nursing home medical record that the treatment was not to commence until he provided further clarification. He should also have subsequently provided clarification in writing as to the correct dilution of bleach and as to the method for administering the treatment in the shower. The nurses should not have commenced the treatment without this written documentation.
199. As to whether the treatment itself was adequately documented by the home once treatment commenced, Ms Bucher notes that the last Wound Care Assessment Chart was completed on 1 July 2014 and that no new Wound Care Assessment Chart was commenced after the bleach treatment began, which she opined was not adequate.¹⁹⁴ I accept Ms Bucher's evidence that this was not adequate.
200. As to whether the treatment was adequately photographed, the nursing home's policy was to take weekly photographs of wounds.¹⁹⁵ Photographs were taken of Mrs Pahiva's skin on Friday 11 July 2014 and on Tuesday 15 July 2014. Accordingly, I find that the treatment was adequately photographed in accordance with the policy.

Whether the Home's follow-up with the general practitioner and/or the specialist during the bleach treatment was adequate

201. As already stated, the nurses should have sought clarification from Dr Bear or Dr Savoulis prior to commencing the treatment, and it was a significant failure not to do so.
202. Once the staff at the nursing home became concerned about Mrs Pahiva, they took the appropriate steps of asking Dr Savoulis to review Mrs Pahiva on 14 and 15 July 2014.

Whether there was adequate pain assessment in circumstances where Ms Pahiva was unable to communicate effectively

203. Ms Bucher formed the impression that staff were regularly checking Mrs Pahiva's body language for non-verbal signs of pain, both during treatment and during the hours following the treatment. She thought that, although formal pain scales were

¹⁹⁴ Exhibit 1, tab 55A, p. 10.

¹⁹⁵ Transcript of oral evidence of Ms Perrins on 27 June 2019, p. 70.

not used, registered nurses and AINs did adequately assess Mrs Pahiva's non-verbal cues.

204. Ms Bucher also observed that, although Mrs Pahiva was noted to have been 'drowsy' on Sunday 13 July 2014, which can be a sign of pain, there was no evidence to suggest that Mrs Pahiva's lethargy was interpreted as a pain response by staff at the nursing home.¹⁹⁶
205. I note that Mrs Pahiva's nursing home records include some completed Abbey Pain Scale forms and other pain assessment documentation, however, these relate to the period following Mrs Pahiva's discharge from Concord Hospital in September 2014.¹⁹⁷
206. As noted by Ms Bucher, no such forms were apparently completed for the period from the commencement of the bleach treatments on 11 July 2014 until Mr Pahiva's transfer to hospital on 15 July 2014.¹⁹⁸ However, Ms Bucher indicates that, in her experience, the use of a pain scale only commences if one or more of the accepted signs of pain are exhibited by the patient (including facial grimacing, moaning with movement, or the other non-verbal signs of pain listed in Ms Bucher's expert report).
207. Dr Rudd gave evidence that a chemical burn is different to a thermal burn, in that it takes time for the chemical to pass through the outer layers of skin, which are insensate, towards the more sensitive, live skin cells and nerve endings. Dr Rudd said that he accordingly would have expected that it would have taken some time for Mrs Pahiva to experience pain after sustaining the burns. He said it was very difficult to know what degree of pain Mrs Pahiva would have perceived at any given point in time.¹⁹⁹
208. When Nurse Wilson saw Mrs Pahiva at 7.45pm or 8.45pm on 15 July 2014 she described her as distressed and said she "*appeared to be in pain*". At 7.40pm, however, Nurse Wilson made an entry: "*solugel applied as directed, no apparent discomfort observed*".²⁰⁰ That record does not state what time the solugel was applied.

¹⁹⁶ Exhibit 1, tab 55A, p. 11-12.

¹⁹⁷ Exhibit 1, tab 56, 2014.

¹⁹⁸ Exhibit 1, tab 56, 2014.

¹⁹⁹ Transcript of oral evidence of Dr Rudd on 26 June 2019, p. 11-12.

²⁰⁰ Exhibit 1, tab 58.

209. Ms Bucher notes that some people demonstrate little to no specific behavior associated with pain.²⁰¹

210. Having considered the above evidence, I am unable to make a finding as to whether adequate pain assessment was conducted by staff at the nursing home in the period prior to Mrs Pahiva's transfer to hospital on 15 July 2014.

Whether there was adequate appraisal, assessment and monitoring of the bleach treatment by Home staff during its administration over several days.

211. As stated above, Mrs Pahiva was left alone in the bathroom for periods of time during the administration of the bleach treatments on 12 and 13 July 2014. I find that this was inappropriate and that she was not adequately monitored during these periods.

212. As already stated, once the staff at the nursing home became concerned about Mrs Pahiva, they took the appropriate steps of asking Dr Savoulis to review her on 14 and 15 July 2014.

Whether the Home staff provided adequate care and monitoring of Mrs Pahiva, including treatment of her burn wounds, following her discharge from Concord Hospital.

213. Although included on the issues list distributed to the interested parties and dated 24 August 2018, the adequacy of the nursing home's care and monitoring of Mrs Pahiva following her discharge from Concord Hospital did not ultimately arise as an issue in the inquest.

The lessons learned and changes made since the bleach treatment and subsequent Australian Aged Care Quality Agency Review.

214. In its written submissions, the nursing home acknowledged that its care of Mrs Pahiva was "sub-standard and unquestionably deficient". Mr Keith Crossland, the current Facility Manager of the nursing home (who commenced his employment with the nursing home in April 2017) apologized to Mrs Pahiva's family in open court on behalf of the Board of Directors and nursing home staff.

Investigations

215. Following Mrs Pahiva's transfer to hospital on 15 July 2014, the nursing home promptly engaged Ms Fleur Hannen, an independent consultant, to conduct an investigation. Ms Hannen's report identified various deficiencies and made a

²⁰¹ Exhibit 1, tab 55A, p. 11.

number of recommendations.²⁰² In its written submissions, the nursing home asserted that it had adopted all of Ms Hannen's recommendations.

216. Ms Perrins also issued a number of memoranda in the aftermath of the events the subject of this inquest, reminding staff of their obligations with respect to contacting a resident's Person Responsible with respect to new treatments and their obligations surrounding the use of restraint.²⁰³

217. The Aged Care Quality Agency, as it was then known, was also asked to look into the nursing home and identified a number of matters where it failed to meet expectations, not all of them related to this incident. It later reviewed the nursing home again and found that outcomes were largely, if not entirely, met.

Lessons learned and changes made

218. I was impressed by Mr Crossland's evidence and his attitude and I accept that, under his management, there has been a positive cultural change at the nursing home.

219. Among other things, the home has increased its use of external consultants, and now has two clinical nursing consultants, Ms Catherine Brown, and Ms Katrina Baily, who are engaged on a contract basis and who provide assistance, training and education to the facility. Ms Bailey deals with policies and procedures and Ms Brown works '*on the floor*' on clinical matters.

220. Ms Brown attends the facility approximately once per month to attend to matters including mentoring registered nurses by accompanying them '*on the floor*' and sharing her expertise, participating in family case conferences and delivering training.²⁰⁴ Ms Brown delivered regular dementia training for staff throughout 2015. She has also delivered training on clinical skills and assessment and clinical documentation, among other subjects.²⁰⁵

221. Ms Brown and Ms Bailey also introduced the Resident of the Day system, which involves scheduled reviews or audits of residents' care plans and documentation.²⁰⁶

²⁰² Exhibit 1, tab 41.

²⁰³ Exhibit 1, tab 70(A) and 70 (B); transcript of oral evidence of Gaye Perrins on 27 June 2019, p. 70-71.

²⁰⁴ Exhibit 1, tab 68, p. 3.

²⁰⁵ Transcript of oral evidence of Catherine Brown on 26 June 2014, p.1-2

²⁰⁶ Transcript of oral evidence of Catherine Brown on 26 June 2014, p. 7.

222. The nursing home has also increased its use of other clinical consultants, who can be called to attend the nursing home to provide specialist advice. For example, the treating RN can now request that a doctor or nurse from the Geriatric Flying Squad from St Vincent's Hospital attend the nursing home to deal with more challenging clinical issues. The Geriatric Flying Squad generally arrive on site within one hour of being contacted.²⁰⁷
223. The nursing home informed the inquest that it has introduced Clinical Care Coordinators for each side of the facility (Side A and Side B), who are responsible for managing nursing and clinical care. The Clinical Care Coordinators are registered nurses who are also now required to have post-basic experience and/or qualifications in gerontology and knowledge and experience working in health or aged care.²⁰⁸ The Clinical Care Coordinators are expected to be available as a point of contact for other nursing staff on the floor and to provide training and education. They are also called on to treat residents in complex and novel situations.²⁰⁹
224. Ms Brown gave evidence that she was confident that, currently, Clinical Care Coordinators engage in active supervision of registered nurses working under them, carrying out random audits to monitor their observance of proper clinical practice and procedure.²¹⁰
225. Ms Brown was asked by counsel assisting what other improvements she was aware of since 2014 at the nursing home, and she replied:
- "What I've seen is a level of advocacy that the registered nurses have taken on board over the last couple of years. So they're stronger in their clinical reflective skills and their ability to discuss conditions and treatments and interventions with the GPs...they have demonstrated more consistency with their nursing enquiry abilities and the clinical practices, they will discuss case studies more often and at handover there is a really solid clinical discussion about the needs of the resident."*²¹¹
226. Ms Brown said that she thinks there is a culture at the nursing home now which encourages registered nurses to be able to raise their concerns and to speak up if

²⁰⁷ Exhibit 1, tab 69, p. 4.

²⁰⁸ Exhibit 1, tab 69, p. 4.

²⁰⁹ Exhibit 1, tab 69, p. 5.

²¹⁰ Transcript of oral evidence of Catherine Brown on 26 June 2019, p 8.

²¹¹ Transcript of oral evidence of Catherine Brown on 26 June 2019, p 10.

they disagree with an instruction from a doctor or if they think something hasn't been done correctly.²¹² Ms Brown said she has observed that there has been an improvement in the assertiveness of nurses in dealing with residents, families and medical practitioners, which she attributed to the training that she and Ms Bailey have provided.²¹³

Whether any recommendations are necessary or desirable

227. During his oral evidence, Mr Crossland said that he would take on board any recommendations for improvement of care which may be made as a result of the inquest.

Assertiveness training

228. In his expert report, Professor Ibrahim opined that assertiveness training for nursing staff would be beneficial.²¹⁴ Mr Crossland said in his oral evidence that the Clinical Care Coordinators have completed external assertiveness training courses, however the registered nurses and AINs have not.²¹⁵ Ms Brown accepted that assertiveness training would be beneficial to registered nurses, particularly in light of the evidence in the inquest as to the deference the nurses had shown to the specialist, Dr Bear.²¹⁶ Some of the nurses involved in Mrs Pahiva's care gave evidence that they thought assertiveness training would be beneficial.

Evaluation of competency

229. Professor Ibrahim opined that the key to any additional training or education that the nursing home may ultimately provide to staff is that the staff demonstrate competency in the skill being taught. He expressed the view (speaking generally) that, often, education and training is offered without any evaluation to ensure that it achieves its goal of bringing about a change in the practice of staff.²¹⁷

230. Ms Brown's evidence was that, when she delivers training, she assesses participants' understanding throughout the session by asking questions and judging their responses. She said that some, but not all, training delivered at the nursing home, includes a questionnaire afterwards to ascertain whether

²¹² Transcript of oral evidence of Catherine Brown on 26 June 2019, p 10.

²¹³ Transcript of oral evidence of Catherine Brown on 26 June 2019, p 12.

²¹⁴ Exhibit 1, tab 55B, p. 14.

²¹⁵ Transcript of oral evidence of Keith Crossland on 27 June 2019, p. 7.

²¹⁶ Transcript of oral evidence of Catherine Brown on 26 June 2019, p. 4.

²¹⁷ Exhibit 1, tab 55B, p. 14.

participants have absorbed the matters being taught. Ms Brown accepted that this type of evaluation following a training session would be advantageous to staff, particularly with respect to clinical documentation and medication management.²¹⁸

231. Mr Crossland said that he saw the benefit in having an evaluation form part of the training for each of the core areas of the clinicians' practice at the nursing home, including medication management, dementia, pain management, wound care and continence. He said he would expect there to be some evaluation at the end of every training session.²¹⁹

Commencing new treatments early in the week

232. Both Professor Ibrahim and Ms Bucher opined that the commencement of non-urgent treatments or medications, particularly novel treatments such as the one involved in this matter, should be delayed until a Monday or Tuesday, as nursing homes are generally staffed by their permanent and more senior staff earlier in the week, and also to ensure that the patient's treating doctor is available, if needed.²²⁰

233. It was not submitted that a recommendation was called for to this effect, however, having heard the evidence in this inquest, I consider that this is a sensible suggestion, although it would need to be balanced against any benefits of commencing treatment as soon as possible.

Closing remarks

234. I would like to thank my counsel assisting, Mr Peter Aitken and his instructing solicitor, Ms Jessica Natoli from the Crown Solicitor's Office for the enormous amount of assistance they provided me.

235. I offer my sincere condolences to the family of Mrs Pahiva who lived a full life, surrounded by her large and loving family.

²¹⁸ Transcript of oral evidence of Catherine Brown on 26 June 2019, p. 3.

²¹⁹ Transcript of oral evidence of Keith Crossland on 27 June 2019, p. 4.

²²⁰ Transcript of oral evidence of Ms Bucher on 28 June 2019, p. 15; transcript of oral evidence of Professor Ibrahim on 28 June 2019, p. 30.

Findings

236. The findings I make under section 81 of the Act are:

Identity

The person who died is Epenesa Pahiva born 12 April 1927.

Date of death

Epenesa Pahiva died on 19 September 2014.

Place of death

Epenesa Pahiva died at Concord Hospital.

Cause of death

Epenesa Pahiva died of the combined effects of ischaemic heart disease and chronic obstructive pulmonary disease, on a background of chemical burns and dementia.

Manner of death

Epenesa Pahiva died of natural causes, following treatment for a skin condition, which resulted in chemical burns, which were healing at the time of her death.

Recommendations

237. I make the following recommendations to Castellorizian Aged Care Services, pursuant to section 82 of the Act:

1. That consideration be given to how clinical staff training can be delivered effectively, including methods of evaluating participants' competency in the knowledge and skills being taught;
2. That consideration be given to identifying an effective method of reminding clinicians of their obligations when a resident is prescribed a new medication (such as, for example, placing a checklist on the resident's file or placing a sign somewhere prominent) including any need to seek family consent;
3. That consideration be given to the current medication management policy as to whether it appropriately provides for (i) all medications to be written by the doctor

- on the resident's medication chart and (ii) for written instructions to be provided by the doctor when necessary, including for novel treatments, and (iii) to ensure that treatment is not commenced without that documentation being provided; and
4. That consideration be given to providing assertiveness training for Registered Nurses and Assistants in Nursing, particularly in relation to dealing with medical professionals, and raising issues of concern at an internal level.

I close this inquest

Magistrate Teresa O'Sullivan
State Coroner
27 September 2019