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Transcript: AMA Chair of the Ethics and Medico-Legal Committee, Dr Chris Moy, ABC News, *with Lorna Dunkley*, Thursday, 17 January 2019.

Subject: Aged Care.

LORNA DUNKLEY: There's disagreement today between aged care providers and GPs over who is responsible for getting consent from families before giving anti-psychotics to dementia patients in nursing homes. Let's talk about this further; I'm joined from Adelaide by Chris Moy, a GP in aged care facilities and the chair of the Australian Medical Association's Ethics and Medico-Legal Committee.

Doctor, very good afternoon to you. What do you think? Where does the onus fall?

CHRIS MOY: Well, really, at the end of the day the right to prescribe is inextricably linked to the responsibility to prescribe. So, at the end of the day if I - and I do this - if I have to sign a medication order or prescription, I'm responsible for that, and so therefore responsibility to obtain consent for that rests with me, ultimately.

LORNA DUNKLEY: Okay. So, you have a responsibility to obtain consent, but the administrators within the nursing home or the aged care facility have responsibility for actually administering it?

CHRIS MOY: Yes, that's the case, and obviously they need to ensure that the order that I've written is administered in the correct way and under the right circumstances, but that's a separate issue to the actual prescribing and writing of the order.

LORNA DUNKLEY: Yeah. So, why is Australia so far behind many other parts in the world on this, with not having any firm legislation?

CHRIS MOY: Well, in fact, there is actually a reasonably good framework in most jurisdictions, it's pretty straightforward. At the end of the day, it is a matter of consent. So, firstly, as a doctor, before I actually provide treatment to anybody, I need to obtain consent from them, I need to say: will you accept if I do this to you? And this also applies to an individual who's lost decision-making capacity, for example, someone's who got severe dementia. Now, in that situation, somebody should be representing them, which is why we really advocate for people to have advanced care directives or appoint decision-makers for them, so that we can ask them on the patient's behalf. And their job- the job of that individual is to do what that patient would have wanted. And so, my job is to say: look, what would your loved one have wanted in these circumstances? And, knowing the information, this is what's happening, and maybe there may be issues of behaviour or violence that may be happening or confusion, or they may be shouting things that may be very distressing. In those circumstances, knowing that information, would your loved one have wanted- would they want this to be prescribed to them?

LORNA DUNKLEY: Dr Moy, I mean, they sound like best-case practices and what should be happening, but why all too often are we hearing these awful stories about families not knowing what's going on, about patients being given drugs that there wasn't consent, why do we keep hearing those stories?

CHRIS MOY: I think one of the issues is that, unfortunately, there is a chronic underfunding of aged care and, unfortunately, situations like the Oakden situation probably give us a bit of an insight into that. And I think that's what we found. For example, as a GP, I actually have to provide a lot more time to a patient. I have to go down and see a patient but also have to take the calls out of hours, which is not remunerated, contact the decision-maker to try and get consent for that, and that may not always be possible. And so, those sorts of things have to be factored in. So, in amongst the issue of the prescribing and obtaining consent is the need for proper funding, not only of the doctors providing the care but also of the facilities themselves, so that the patients get appropriate care, and appropriate supervision and appropriate administration of their medications.

LORNA DUNKLEY: Okay. So, to step forward and to be able to say: this will not happen again - what needs to happen?

CHRIS MOY: I think what will happen - it will probably come out in the Oakden review - but there are actually frameworks, for example in South Australia where I work, for the prescribing where you do need to first up have gone through a proper process of assessing a patient to make sure that there are not other things that you need to do. For example, making sure they don't have a medical condition that could be causing behaviour that needs medications, that there aren't other measures that could be useful. For example, playing music, that may comfort the patient may be helpful. And ultimately you're looking at medications as a last resort, and then going through the proper consent process so that the doctor first up ensures that they get consent from the right person, and that person giving consent is the legally appropriate individual but is also acting for the patient and doing what the patient would have wanted.

LORNA DUNKLEY: Chris Moy, thank you for your time this afternoon.

CHRIS MOY: It's a pleasure.

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