



## ANMF (Vic Branch) Policy

### Position statement: Non-consensual administration of medication to immigration detainees (\*\*\*) under review – July 2020 (\*\*\*)

Note: This position statement should be read in conjunction with the Australian Nursing and Midwifery Federation Position Statement on Refugees.

The ANMF (Vic Branch) (ANMF (Vic Branch)) maintains that registered nurses, registered midwives and enrolled nurses must be able to practise according to the law and their Code of Professional Conduct<sup>1</sup> and the Code of Ethics<sup>2</sup>. Further, employers must ensure registered and enrolled nurses and registered midwives are able to practise accordingly, regardless of setting or context. The ANMF (Vic Branch), as the peak organisation representing registered and enrolled nurses and registered midwives, both professionally and industrially, will provide support to its members who have been prevented from fulfilling their legal, professional and ethical obligations – or who are placed in a position where this may potentially occur.

It is the position of the ANMF (Vic Branch) that:

1. Australia has an obligation to treat every person humanely and with respect, courtesy and consideration.
2. The *Migration Act 1958* (Commonwealth) and its associated *Regulations* is the legislative framework governing the detention of illegal non-citizens. There is nothing within the *Migration Act* or the *Regulations* which provide that rights afforded Australian citizens are to be withheld from non-citizens held in detention other than the right to live freely in the community.
3. Migration Regulations 1994 - REG 5.35 provides as follows:  
***Medical treatment of persons in detention under the Act***  
(1) *In this regulation:*  
***"detainee"*** means a person held at a detention centre in detention under the Act.<sup>3</sup>  
***"medical treatment"*** includes:
  - a) the administration of nourishment and fluids; and
  - b) treatment in a hospital.(2) *The Secretary may authorise medical treatment to be given to a detainee if:*
  - a) the Secretary, acting in person and on the written advice of:
    - i. a Commonwealth Medical Officer; or
    - ii. another registered medical practitioner;forms the opinion that:
    - iii. that detainee needs medical treatment; and
    - iv. if medical treatment is not given to that detainee, there will be a serious

<sup>1</sup> ANMC: Code of Professional Conduct for Nurses in Australia, 2008

<sup>2</sup> ANMC: Code of Ethics for Nurses in Australia, 2008

<sup>3</sup> [http://www.austlii.edu.au/au/legis/cth/consol\\_reg/mr1994227/s5.35.html](http://www.austlii.edu.au/au/legis/cth/consol_reg/mr1994227/s5.35.html)

- risk to his or her life or health; and*
- b) *that detainee fails to give, refuses to give, or is not reasonably capable of giving, consent to the medical treatment.*
- (3) *An authorisation by the Secretary under subregulation (2) is authority for the use of reasonable force (including the reasonable use of restraint and sedatives) for the purpose of giving medical treatment to a detainee.*
- (4) *A detainee to whom medical treatment is given under an authorisation under subregulation (2) is taken for all purposes to have consented to the treatment.*
- (5) *Medical treatment that is given under an authorisation under subregulation (2) must be given by, or in the presence of, a registered medical practitioner.*
- (6) *Nothing in this regulation authorises the Secretary to require a registered medical practitioner to act in a way contrary to the ethical, moral or religious convictions of that medical practitioner.*
4. Nurses and midwives, regardless of where they work, are bound by the law and the by the Code of Professional Conduct and the Code of Ethics and Professional Boundaries relevant to nursing and midwifery.
5. All Health practitioners working in detention centres are entitled, and indeed are obligated, to ensure that non-consensual administration of medication is carried out strictly in accordance with the provisions of Regulation 5.35. Nurses and midwives are entitled, and obligated, to refuse to administer medication in the absence of consent from the detainee unless provisions of Regulation 5.35 are adhered to.
6. The law and above codes of conduct and ethics equally apply, regardless of the reason for the non-consensual administration of medication. That is to say, it does not matter if the issue arises in the context of deportation or generally in the clinical care of an individual.
7. If there is a serious risk to the detainee's life or health to the extent of requiring non-consensual medical treatment, then that detainee would certainly not be in a reasonable state to be deported, and, indeed would require, as a matter of extreme urgency, admission to an appropriate healthcare facility.
8. If a detainee is so psychologically or psychiatrically disturbed that his or her life or health was at serious risk and therefore requiring non-consensual sedation, it is clear that detainee should be assessed by an appropriate medical practitioner pursuant to the *Mental Health Act (Vic) 2014* and not deported until such time as a medical practitioner provided advice that the detainee was no longer at serious risk.
9. A detainee has no less right than a citizen in relation to the administration of medication and consent. The principles governing nursing and midwifery practice in relation to administration of medication in a detention centre are no different to those governing nursing or midwifery practice in any other health care setting. Any medications to be used during the deportation of a detainee must be prescribed by a suitably authorised health practitioner and, in circumstances where the detainee does not consent, the prescribing by the treating relevant practitioner must be in accordance with Regulation 5.35, as set out above.
10. There is nothing explicitly described in the *Mental Health Act* which would allow sedation to be given to a detainee for the purpose of the deportation. The *Mental Health Act* relates to the care, treatment and protection of mentally ill and mentally disordered persons. The *Mental Health Act* sets out the processes required to have a person determined to be

mentally ill or disordered and the care and treatment of such persons. Notwithstanding that it is possible that a person being deported may come within the description of a mentally disordered person as set out above, the process of determination, care and treatment required by the *Mental Health Act* does not allow for sedation for the purpose of deportation.

11. A nurse or midwife is also entitled, and obligated, to refuse to do something, such as administer medication, in circumstances where she or he forms the opinion that it is not clinically warranted and/or is contrary to her or his moral/ethical beliefs. Furthermore, in circumstances where a nurse or midwife is instructed by her or his employer to administer medication in circumstances where it is not clinically warranted and/or is contrary to the provisions of Regulation 5.35, the nurse should refuse to administer it and write an incident report both in the detainee's medical records and separately. It is also open to the nurse or midwife to report the matter to the Health Care Complaints Commission or other appropriate body.
12. It is also the case that if a nurse or midwife observes the administration of medication contrary to the provisions of Regulation 5.35, she or he should write incident reports, advise the employer and, if necessary, notify the Health Complaints Commission as per the Health Complaints Act 2016. It would, in either circumstance, be prudent for the nurse to consult with her or his representative from the ANMF (Vic Branch).