

# Minter Ellison Health News

23 June 2010

## Case Law

### Commonwealth

#### ***Gorman v Medical Board of NSW***

Dr Gorman ('the applicant') was an ophthalmologist who also conducted a general medical practice.

The Medical Board of New South Wales suspended the applicant from practising medicine for eight weeks in December 2008 and extended the suspension by orders made on three subsequent occasions. The applicant's appeal to the Medical Tribunal of New South Wales was dismissed on the basis that the applicant's treatment philosophy (spinal manipulation could relieve any medical condition) presented a real risk to the public because his advice was not impartial and therefore rendered it unlikely that patients would be able to provide informed consent to spinal manipulation treatment. An appeal to the New South Wales Court of Appeal was also rejected.

In considering the special leave application to the High Court, Heydon and Bell JJ rejected the applicant's contention that the Medical Tribunal of New South Wales was too ready to accept evidence that the applicant's treatment philosophy was unconventional. They determined that if special leave were granted, the applicant would have no prospects of success.

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### Queensland

#### ***Inquest into the Death of Edith Whiting***

In August 2005, Edith Whiting ('the deceased') experienced severe epigastric pain and vomiting and presented to the Bundaberg Base Hospital ('the Hospital'). The deceased was noted to have a past history of hypertension and bronchial asthma. After investigations were undertaken, the deceased was given analgesic medication and discharged. After the pain worsened, the deceased represented to the Hospital. An ultrasound indicated gall stones or inflammation of the gall bladder. The deceased was then admitted to the surgical ward, at which time a CT scan was ordered. Several minutes into the CT scan, the deceased suffered nausea and lost consciousness. The deceased then entered cardio respiratory arrest and could not be resuscitated.

The Coroner ultimately found that the deceased died as a result of an adverse reaction to the injection of contrast medium during the CT scan.

The Coroner accepted expert evidence that the optimal way for the gall stones or bladder inflammation to be investigated was for the CT scan, with contrast medium, to be ordered.

The Coroner accepted that active or acute asthma increases the risk of an adverse reaction to a CT scan with contrast medium. Although the deceased had asthma that required medication on two occasions on the day of her death, the Coroner held that this fact would not have changed the way the deceased was treated. This was because the treating team needed to exclude the initial diagnoses; confirmation of the diagnoses would have required transfer to a tertiary hospital for surgery; transfer was unlikely to be agreed to without the confirmation of one of the diagnoses; and the transfer and proposed surgery involved far more risk to the patient than the CT scan, meaning that the risks were balanced in favour of proceeding with the CT scan with contrast medium.

The Coroner found that, upon administration of the contrast, the deceased's condition did not indicate that she should not have received it. There was no wheezing or any other clinical sign consistent with the deceased's asthma being acute or active.

In relation to the resuscitation efforts after the deceased's adverse reaction to the contrast medium, the Coroner noted that 'the efforts of the doctors and nurses were hampered by a lack of coordination and some poor decisions', with no doctor taking a leadership role. Although the decision to re-intubate during the resuscitation attempt was reasonable because the initial intubation may not have been properly placed, the Coroner held that adrenaline should have been given earlier and the deceased should have received a second dose of adrenaline sooner or otherwise should have been given more, smaller doses. However, it was held that 'the doctors did their best in challenging conditions'. The Coroner concluded that regardless of the treatment that may have been provided to the deceased, the chance of her recovering from severe respiratory collapse was slight. Accordingly, it could not be said that 'anything the doctors in the CT room could reasonably have done would have made survival likely.'

The Coroner decided not to refer the conduct of any of the medical staff for prosecution or discipline.

The Coroner declined to make any preventative recommendations on the basis that those running the Hospital were best placed to address the problems arising from the death of the deceased. Further, since the death, the Hospital had made changes to the training of staff, standardised the stocking of emergency trolleys, introduced CO2 monitors and changed staffing arrangements to have regard to the need for a senior doctor to be on hand whenever contrast medium was administered.

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## New Zealand

### ***Health and Disability Commissioner Report: Edmund Hillary Retirement Village and General Practitioner Dr P***

The Commissioner received a complaint about the services provided to Mr A by Edmund Hillary Retirement Village and Dr P.

Mr A (aged 80 years) was a permanent resident at the Retirement Village. Mr A had a fall and was checked by nursing staff, who found no evidence of injury. Staff informed Mr A's son, Mr C, that he had had a fall.

The following morning Mr A was found on the floor of his bathroom. Nursing staff agreed that Mr A should be seen by a doctor. Dr P assessed Mr A that day and found that Mr A had no significant injury. The following day, Dr P saw Mr A again. Mr A's condition had deteriorated and it was agreed that he should be admitted to hospital. Upon admission, Mr A was found to have several fractures and he was dehydrated. Mr A died the following day.

The Commissioner noted that 'it is unrealistic to expect that residential care can totally prevent falls'. Nonetheless, Mr A had the right to receive appropriate care in a timely manner from the Retirement Village staff. The Commissioner found that staff did not communicate effectively with one another or with Dr P to ensure that Mr A was provided with the care he needed.

The Commissioner found that the Retirement Village breached the Code of Health and Disability Services Consumers' Rights ('the Code') in failing to ensure that Mr A received quality and continuity of services. Dr P was also found to have breached the Code in failing to ensure that adequate systems were in place for managing the care of patients at the Retirement Village and for failing to communicate his intentions with relation to Mr A's care to Retirement Village staff or Mr A's family.

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## Legislation

### New South Wales

#### ***Health Practitioner Regulation Amendment Act 2010 (NSW)***

The *Health Practitioner Regulation Amendment Act 2010* (NSW) was assented to on 15 June 2010. The Bill was introduced into the Legislative Assembly and received its Second Reading Speech on 20 May 2010. The Bill continues legislative reforms commenced when the NSW Government passed the *Health Practitioner Regulation Act 2009* (NSW) that adopted many provisions set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld), giving effect to the Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions. The Bill would make various amendments consequential upon the proposed commencement of the National Law in NSW. The Bill would also repeal certain legislation that is to be redundant upon the proposed commencement of the National Law in NSW, in relation to the following professionals: (a) chiropractors; (b)



dentists and dental technicians; (c) doctors, nurses and midwives; (d) optometrists; (e) osteopaths; (f) pharmacists; (g) physiotherapists; (h) podiatrists; and (i) psychologists.

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## News

### Biotechnology

#### **State backs further ovarian cancer test**

The Victorian Government is backing a multimillion-dollar trial of a test for the early detection of ovarian cancer, developed in Melbourne by biotechnology company HealthLinx.

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### E-Health

#### **Roxon offers concessions in e-health**

Health Minister Nicola Roxon has offered the Opposition concessions in a push to get the Government's electronic health identifier legislation passed in the Senate.

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#### **GPs call for individual health identifier**

General practice representative groups have joined forces to push for the Healthcare Identifiers Bill 2010 to be passed.

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### General Health

#### **Paid parental leave law passes**

The Government has passed paid parental leave legislation providing 18 weeks of pay at the minimum wage.

[Click here for Bill](#)

#### **Senate Report backs new R&D scheme**

A Senate Committee report into the Government's new R&D tax credit scheme has endorsed the plan and recommended that the legislation supporting the scheme be passed in time to have it up and running by June 30.

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#### **Fake doctor jailed for 14 months**

An "overachieving and altruistic" man who was not a qualified doctor but treated up to 400 patients at Alice Springs Hospital will spend at least 14 months in jail.

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**Sirtex awarded Gray payday**

A Federal Court judge has ruled inventor and Sirtex Medical founder Dr Bruce Gray must pay the company he established 86% of its remaining legal costs – a payout estimated to be \$A1.9 million.

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## Hospitals

**Elective surgery waiting list reduction plan**

The Australian Government has released its quarterly report on the Elective Surgery Waiting List Reduction Plan. This report is compiled from individual progress reports submitted by all States and Territories under the Plan and provides information from the September Quarter 2009.

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**Rudd's health reform plan still on drawing board**

Prime Minister Rudd's \$50 billion hospitals reform plan faces further changes and is unlikely to be debated in Parliament before the Federal election.

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**Elective surgery delays worsen, but only in NSW**

NSW was the only State to go backwards in elective surgery performance last year, new figures show, with patients waiting longer for their procedures. There was also a small drop in the number of operations.

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**Roxon backs away from withholding health funding**

Western Australia may still get \$350 million in new Federal health funding, even if the Barnett Government refuses to sign up to the Prime Minister's hospital reform package.

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**Psych patients placed into crowded wards**

The closure of mental-health hospital beds has continued apace in the past four years, forcing psychiatric patients into crowded general wards or to queue for treatment at community clinics that are few and under-resourced.

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## Preventative Health

### **Call for clearer guidelines on alcohol intake during pregnancy**

Australian guidelines on alcohol intake during pregnancy are inconsistent and research is urgently needed to establish the effect of low to moderate drinking on the unborn child, researchers say.

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### **Male reproductive health linked to chronic diseases**

Male reproductive health problems may coexist with, or represent a marker for, other common conditions including heart disease and diabetes, according to an article published in the *Medical Journal of Australia*.

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### **AMA calls on Senate to pass National Preventative Health Agency Bill**

AMA President, Dr Andrew Pesce, said that the AMA is calling on the Senate to pass the National Preventative Health Agency Bill during this fortnight's Parliamentary sitting period.

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### **Big step forward in fighting tobacco addiction**

Legislation has passed Parliament that will help encourage an estimated 87,000 Australians to quit smoking.

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## New Zealand

### **Obese women tell of surgery letdown**

Two morbidly obese women risk losing limbs, going blind or even dying without gastric bypasses, but their district health boards will not pay for the life-changing surgery.

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### **Mixed messages on babies in bed**

Calls for mothers to stop sleeping with their newborn children are being ignored by some hospitals and birthing centres, with staff at one saying it's better to teach mothers how to do it safely than ignore the popular practice.

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### **Abortion numbers drop**

Abortion statistics released today show 17,550 abortions were performed last year, down from 17,940 in 2008.

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