

# Minter Ellison Health News

9 June 2010

## Case law

### NSW

#### ***Stamoulis v Sydney South West Area Health Service***

In February 2006, the patient underwent mammograms and was told that there was no evidence she had breast cancer. After the patient noticed changes in her breast tissue in January 2007, significant breast cancer was identified. The patient sued on the basis that the two radiologists who conducted the earlier mammograms were negligent in failing to identify her cancer. Because of the reduction in her life expectancy, the trial was expedited so that damages could be assessed within her lifetime.

In October 2008, damages of \$405,990.15 were awarded. The defendant health service appealed against the October 2008 judgment, but the patient died before the appeal judgment was delivered in July 2009. The patient's daughter was substituted as the plaintiff acting as the representative of the deceased patient's estate. The NSW Court of Appeal held that the trial judge had been incorrect in his decision to disallow the expert evidence offered by the two radiologists who had failed to detect the cancer in 2008. A retrial was ordered on the issue of negligence, but not on the issues of causation or the assessment of damages.

At the retrial, all of the medical experts agreed that if taken in isolation, the radiology images from the 2006 mammogram indicated that the patient should have been recalled for further investigation. The two radiologists who initially failed to detect the patient's cancer and who were allowed to give expert evidence in the retrial told the court that their assessment was not based on the 2006 radiology images in isolation. Rather, they defended their practice of reviewing images in the context of a patient's previous mammography images and noting whether there had been any significant changes.

The judge was critical of the evidence given by the two radiologists who had treated the patient. He noted that one expert took frequent long pauses to formulate her answers and that the extent to which she sought to propound "her case" made her unreliable. The evidence of the other examining radiologist was described as having been delivered as a "prepared polemic". The judge did not consider this expert's approach to the evidence to have been objective, and therefore placed no weight on his testimony.

After reviewing the evidence of the remaining experts, who repeated the evidence they had given at the first trial, the judge was satisfied that the plaintiff had discharged the burden of proof and that radiologists with the appropriate level of care and skill would have recalled the patient for further investigation. Judgment was entered in favour of the estate of the deceased patient.

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## New Zealand

### ***Health and Disability Commissioner Report: Summerset Care Ltd, Nurse manager, Ms C***

The Health and Disability Commissioner (the Commissioner) investigated a complaint about the services provided to Mrs A, a resident of Summerset Trentham Rest Home and Hospital (Summerset). Mrs A was admitted to hospital following a fall, and was treated for pneumonia. Upon discharge to Summerset, the hospital discharge summary noted that Mrs A's hydration must be carefully monitored. Summerset did not monitor Mrs A's hydration appropriately, and her condition deteriorated. She was re-admitted to hospital when she began coughing purulent sputum, and died six days later of dehydration and respiratory arrest.

The Commissioner noted that despite clear directions Mrs A's fluid chart was not correctly completed, her catheter was not monitored properly, and she was not administered fluids as directed. The Commissioner expressed concern at a "disturbing culture of non-compliance with clear internal policies and procedures" evidenced in several recent Commissioner Reports involving rest homes. The Commissioner found Summerset had failed to provide an adequate standard of care to Mrs A and had failed to maintain adequate documentation. It had also failed to appropriately update Mrs A's daughter on Mrs A's condition.

Accordingly, Summerset had breached Rights 4(1), 4(2), 4(3) and 6(1) of the Code of Health and Disability Services Consumers' Rights (the Code). The nurse manager at Summerset, Ms C, was found to have breached the same rights as Summerset. In addition, in giving inaccurate answers to Mrs A's daughter about the involvement of the doctor in Mrs A's care, Ms C also breached Right 6(3), which provides for the right to accurate and honest answers to questions relating to services.

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## News

### E-Health

#### **E-health records to be accessed via online healthcare 'portal'**

The Federal Government's "personally-controlled" e-health records system will be delivered via a "portal", but with the government still "mapping out the build" the option for outsourcing to platforms like Microsoft's HealthVault or Google Health reportedly remain on the table.

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**iSOFT shares plummet 30% after revenue downgrade**

iSOFT Group Limited have plummeted 30% after the company downgraded its earnings forecast for the second time since reporting its half-year results.

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**Government to amend healthcare identifiers bill**

Health Minister Nicola Roxon has agreed to amend the Healthcare Identifiers Bill to address industry and medical provider concerns.

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## General Health

**AMA questions Commonwealth health reform plan**

Health groups have expressed concerns about the implementation of health reforms.

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**SA Coroner to investigate homebirth**

The South Australian deputy coroner will investigate the death of a newborn baby after ruling the girl had lived briefly following an ill-fated home birth.

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**First Comparative Health Information under Australian Reforms**

The first set of comparative performance data about Australia's health system has been published by the COAG Reform Council.

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**NSW mental health patients to receive involuntary care for longer before legal review**

Leading psychiatrists warn that the civil rights of mentally ill people could be eroded by plans to extend the length of time patients may be held in locked wards without legal review.

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## Hospitals

**NSW surgery waiting times 'growing'**

Waiting times for surgery in NSW hospitals are worse than Government data shows, a survey of doctors has found, amid calls for a large increase in health spending in the NSW State budget.

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## Pharmaceuticals

### **Pill 'caused gambling addiction'**

More than 100 people who allegedly became addicted to gambling and pornography after taking a prescription drug used to treat tremors associated with Parkinson's disease are suing two drug companies.

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### **CSL recalls child flu vaccine**

CSL Biotherapies said it is voluntarily recalling its flu vaccine Fluvax after Australia's Chief Medical Officer said a study showed there was a risk to children under five.

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### **Novogen Ltd market capitalisation halves as ovarian cancer drug fails**

Novogen Limited lost almost half its market value after the company announced the failure of its ovarian cancer treatment in a worldwide phase-three clinical study.

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## Preventative Health

### **Cancer research reignites calls to ban tanning beds**

The health department has been called to ban tanning beds after new research confirms they dramatically increase the risk of skin cancer, regardless of the type of bed and length of time they are used, experts say.

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### **Breast cancer vaccine a step closer**

A vaccine to stop women developing breast cancer could be on the market within a decade after trials on mice gave "overwhelmingly favourable results", but experts are warning caution is needed over the findings.

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## Research

### **Funding cut 'to curb stem cell research'**

Federal money for stem cell research will fall substantially when the Australian Stem Cell Centre shuts next year, scientists have warned, saying proposed new funding is only half what is now being delivered.

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### **Government's new R&D tax credit scheme**

KPMG tax expert David Gelb comments on R&D tax credit scheme.

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## New Zealand

### **Worker outraged at 9-day X-ray wait**

A staff member at a Christchurch rest home claims a resident waited nine days after suffering a fall before doctors found the man had a broken leg.

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### **Board failed to get advice over patient sex**

Whanganui District Health Board members have questioned why "inappropriate relationships" two staff had with a female patient were not immediately reported to police.

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### **DHB says no evidence to private nurse claim**

A Nelson Hospital investigation has found no evidence to back up claims by the daughter of an elderly patient that she was told to hire a private nurse because staff were overworked.

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### **New Zealand trainee doctors to get overseas experience on full pay in trial**

The New Zealand Government is trialling a programme to pay trainee doctors a full salary while they gain experience overseas.

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