

Minter Ellison Health News

16 June 2010

Case Law

Queensland

Inquest into the Death of Bradley John Muller

Bradley Muller ('the deceased') had a history of overdosing on prescription medications. On 1 November 2008, the deceased's father found the deceased on the floor of his bedroom. The deceased was unresponsive and it was determined that the cause of death was an overdose of Seroquel augmented by alcohol.

The Coroner found that in the year prior to his death, the deceased obtained prescriptions for Seroquel from four different doctors. Those prescriptions were filled at four different pharmacies located in the Lockyer Valley. However, the Coroner found that, while the deceased was able to stockpile large amounts of medication, this did not directly contribute to his death.

In the early morning before his death, the deceased attended the Gatton Hospital on three occasions. On the first occasion, the deceased was treated for dehydration before discharging himself. On the second and third occasions, the deceased reported that he had taken pills. The only time that the nurse on duty contacted the doctor on duty was to have approval given to administer the intravenous drip on the deceased's initial presentation to the Hospital. The nurse did not contact the doctor for direction in relation to the deceased's taking of pills. This was despite the fact that deceased told the nurse that he was suicidal and that the deceased was a known mental health patient who had experienced at least 20 overdoses in the past. The Coroner found that the inaction of the staff at the Hospital, particularly the nurse on duty, when the deceased re-attended the Hospital contributed to his death.

The Coroner recommended that:

- the drug Seroquel be packaged, marketed and supplied in packets of 30 to protect against lethal doses of the medication being dispensed to vulnerable members of society;
- Queensland Health provide full training in emergency and mental health to health professionals staffing regional and rural hospitals after hours;
- Queensland Health implement a policy for dealing with mental health patients presenting to regional and rural hospitals after hours; and

- a national database containing dispensing histories for all patients be developed to enable pharmacists to identify the over-dispensing of prescription medication, with corresponding amendments to the Federal privacy laws to enable PBS information about a patient to be disclosed to approved suppliers of medication.

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South Australia

Inquest into the Death of Aileen Dawn Promnitz

Aileen Promnitz ('the deceased') died on 6 March 2006 at 79 years of age. At the time of her death, the deceased was a resident of the St Hilarion Nursing Home at Lockleys. During the course of the evening on 5 March 2006, the deceased was transferred to the Queen Elizabeth Hospital as a result of dehydration and deterioration in her health over the course of the day. Upon arrival at the Hospital at 8pm, the deceased was triaged at Priority 4. However, the deceased was not attended by a doctor and was found to be deceased by a member of the public in the waiting area at 2am the next morning. An autopsy confirmed that the cause of death was sepsis due to urinary tract infection with Group B streptococci.

The principal issue for consideration before the Coroner was how the deceased could be left for 6 hours without being seen by a medical practitioner and how she came to die in those circumstances.

Expert evidence suggested that the delay was unacceptable. The Coroner agreed with this assessment, noting that 'it is wrong that a 79 year old lady should be left for 5 to 6 hours only to die alone in the waiting room of the Emergency Department of one of the State's leading public hospitals.' The Coroner found that if the deceased's urinary tract infection had been treated earlier, it was quite possible that the deceased would not have died because there was an available method of treatment, namely aggressive intravenous fluids for rehydration and maintenance of blood pressure and the early use of antibiotics to treat infection.

Although the deceased was seen twice by a nurse in the 6 hours before her death and the deceased's vital signs were found to be normal at those times, expert evidence established that vital signs are often the last things to change in cases like the deceased's. Sudden and potentially fatal deterioration is common.

Expert testimony suggested that the triaging of the deceased at Priority 4 was appropriate but noted that, in a well-functioning Emergency Department, most people would be treated within one hour pursuant to that classification.

Subsequent to the death of the deceased, the Queen Elizabeth Hospital made several changes to its policies and practices, including:

- the employment of a nurse in the Emergency Department to assist the triage nurse by observing and maintaining contact with patients in the waiting room;
- the adoption of a Code E over-capacity policy which could be invoked at any point by the Emergency Department to signal to other areas of the Hospital that the Emergency Department requires assistance; and
- the addition of a new ward to the Hospital called the Diagnostic and Planning Unit with 16 beds to enable swift consultation and diagnosis of patients.

The Coroner held that the deceased's death was avoidable. However, it was noted that the changes implemented by the Queen Elizabeth Hospital gave cause for hope that the death was unlikely to be repeated in the future.

The Coroner made no recommendations in relation to the Queen Elizabeth Hospital. However, the Coroner noted with significant concern expert evidence that the support for nursing home patients by general practitioners in South Australia is not adequate. The expert evidence suggested that inadequate support means that the acute hospital setting 'then becomes the first line for sick elderly patients who do not need to be in a hospital and, in fact, care can be compromised by them coming into a hospital'. The Coroner referred these concerns to the Commonwealth Minister for Health and Ageing.

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New Zealand

Health and Disability Commissioner Report: Counsellor, Mr B

The Health and Disability Commissioner (the Commissioner) investigated a complaint from Ms A regarding counselling services provided by Mr B through a District Health Board's Community Alcohol and Drug Service.

Ms A and Mr B communicated occasionally by text message outside of her appointments. Following a conversation by text message one evening, Mr B drove out to see Ms A at her partner's home. Ms A and Mr B went for a short drive and engaged in consensual sexual foreplay. Mr B took Ms A back to her partner's home. After Ms A had got out of the car, Mr B sent her a text asking her to perform a sexual act. Ms A refused and Mr B left.

The Commissioner found that Mr B breached Right 2 of the Code of Health and Disability Services Consumers Rights (the Code). Ms A had the right to be free from discrimination, coercion, harassment, and sexual, financial, or other exploitation. The Commissioner noted that it is "simply unacceptable" for health professionals to engage in sexual relationships with clients, regardless of the consensual nature of the sexual context. The Commissioner found that Mr B had an obligation to maintain a professional relationship with Ms A.


The Commissioner referred the complaint to the Director of Proceedings under the *Health and Disability Commissioner Act 1994*. The Director of Proceedings decided to take a claim to the Human Rights Review Tribunal. The matter was resolved between the parties which included Mr B paying compensation to Ms A.

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Health and Disability Commissioner Report: Medical Procedures on High Risk Patients

The Commissioner released a report following a complaint from the Coroner about the services provided by two District Health Boards to Mr A in 2009. Mr A, a Jehovah's Witness, suffered from liver cancer, chronic hepatitis B and renal failure.

Mr A had two teeth extracted by the Oral Health Service at one District Health Board. He was admitted to the Emergency Department at another District Health Board the following day complaining of bleeding from the extraction sockets. Mr A was treated but his condition deteriorated. He refused blood and blood products.



Mr A was seen by an Emergency Department Register three hours after his admission. Mr A was later moved to a ward. His renal function deteriorated in spite of treatment and Mr A died the following day. The cause of his death was bleeding following tooth extraction. The forensic pathologist noted that Mr A's liver condition was a factor known to contribute to bleeding.

The Commissioner found that the Oral Health Service adequately addressed the factors that contributed to Mr A's death. The Oral Health Service now requires that all verbal interactions with patients are documented, that repeat blood tests should be taken to confirm safety for extraction, and that the pre-assessment health questionnaire asks patients if there are any specific interventions or modes of treatment that they do not wish to receive.

The Commissioner expressed concern at the three hour delay between the time that Mr A was admitted to the Emergency Department and seen by a medical officer. The Commissioner considered that a further investigation would no elicit any additional information, particularly in light of the thorough investigation undertaken by the Oral Health Service and the Coroner.

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Legislation

Commonwealth


National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2010 (Cth)

The *National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2010 (Cth)* proposes to amend the legislation listed below. The Bill was introduced into the House of Representatives and received its second reading speech on 2 June 2010. According to the explanatory memorandum, the Bill would make consequential amendments as a result of proposed changes to s. 100 listing arrangements under the *National Health Act 1953 (Cth)*.

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Health Practitioner Regulation (Consequential Amendments) Act 2010 (Cth)

The *Health Practitioner Regulation (Consequential Amendments) Act 2010 (Cth)* was assented to on 31 May 2010. The Bill was introduced into the House of Representatives and received its Second Reading Speech on 24 February 2010. According to the Explanatory Memorandum, the Bill proposes to make consequential and transitional amendments required to recognise and support the National Registration and Accreditation Scheme for the Health Professions ("NRAS"), which the Council of Australian Governments agreed to establish in 2006 and which is provided for under State and Territory legislation. The Bill would make various amendments, including to: (a) ensure definitions of health practitioners are consistent with the NRAS, by substituting or replacing definitions of such terms as "consultant physician", "general practitioner" and "registered nurse"; and (b) repeal ss. 3D to 3G relating to recognition and registration of specialist and consultant physicians as a result of the transfer of determinative power regarding the registration of such practitioners from the relevant



Minister to the new national Medical Board of Australia ("MBA"); (c) repeal the definition of "vocationally registered general practitioners" and provide for related transitional matters; (d) amend s. 106XB (Referring to appropriate regulatory body and noncompliance by a practitioner with professional standards) to require that the Director of Professional Services Review forward material to the MBA; and (e) clarify matters relating to the meaning of "medical college".

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New South Wales

Mental Health Amendment (Tribunal) Regulation 2010 (NSW)

The Mental Health Amendment (Tribunal) Regulation 2010 (NSW) amends the Mental Health Regulation 2007 (NSW). The amending Regulation makes consequential amendments in relation to those made by the Courts and Crimes Legislation Further Amendment Act 2008 (NSW) to the Mental Health Act 2007 (NSW), which provide that "mental health inquiries are to be conducted by the Mental Health Review Tribunal instead of Magistrates".

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News

Biotechnology

CSL's bad blood?

CSL Limited might be irked over Spain's Grifols plans to merge with former CSL target Talecris. But while over the longer term sector consolidation will pose problems, there's a short-term gain to be made.

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Mayo Clinic pulls out of CSL suit

The Mayo Clinic has unexpectedly withdrawn from a multimillion-dollar antitrust lawsuit against CSL Limited and many other US hospitals have also walked away from the case.

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Cancer gene ownership faces legal challenge

A landmark court case will test the legality of an Australian patent for a breast and ovarian cancer gene owned by an American biotechnology company and two international research organisations.

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Budgets

Roozendaal to trumpet State's rising economy

Figures released by NSW Treasurer Eric Roozendaal with the NSW Budget will show the State's economy on the rebound, with output for 2009-10 exceeding projections by \$11.5 billion.

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[Click here for Budget summary](#)

Queensland Budget snapshot

Queensland Premier Anna Bligh and her Treasurer, Andrew Fraser, have delivered the Budget.

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E-Health

What the Gov't has to show for its e-health spendathon

Five weeks after the Federal Budget, it remains unclear exactly what Australian taxpayers will receive come June 2012 for their \$466.7 million investment in personal e-health records.

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General Health

Patel won't give evidence at trial

Surgeon Jayant Patel revealed at his manslaughter trial that he will not give or call evidence in his defence.

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Obesity doctor guilty of misconduct

An obesity doctor has been found guilty of unsatisfactory professional conduct over the deaths of two patients who underwent radical weight loss surgery.

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Psychiatrist's patient care questioned

When Yolande Lucire saw a psychiatrist on July 5, 2007, she had a feeling "of impending doom ... that something dreadful would happen".

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Medical research institutes face cuts

Medical research institutes are bracing for steep cuts in their funding following rule changes that mean universities no longer receive Federal research infrastructure money for work carried out by their institute partners.

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Record spending to take 25pc of the cake

Health spending will break the \$10 billion barrier for the first time in Queensland, having almost doubled over the past five years to keep pace with the State's fast-growing and ageing population.

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Brain-bleed baby case 'rare', Coroner told

A Paediatrician treating a newborn baby who died from a bleed in her brain and multiple organ failure told an inquest he had never seen a case like it in 32 years.

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Hospitals

Hospital being probed for 'double dipping'

Melbourne's Northern Hospital is under investigation by Medicare over alleged illegal billing practices used to raise funds to reward senior staff.

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AMA warns of longer NSW surgery waiting times

Industry figures suggested the State's hospital system had been short-changed by a drop in real funding, according to AMA.

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AMA questions Federal health plan

AMA have expressed concerns about the implementation of the Australian Government's health reforms.

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[Click here for AMA Senate Committee Inquiry Submission](#)

Cancer patients denied surgery

Hundreds of patients in Sydney, many needing spine and cancer surgery, have been left off hospital waiting lists for up to a year.

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Pharmaceuticals

Glaxo's Avandia increases heart risks: US reviewer

An analysis by US Government scientists found GlaxoSmithKline Plc's controversial diabetes drug Avandia increased heart risks and deaths compared to a rival pill, according to an email from a Food and Drug Administration reviewer who worked on the study.

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Cancer drug extends ovarian survival rate

A promising drug used in the treatment of bowel, breast and lung cancer could also help to extend the lives of women with advanced ovarian tumours, preliminary trial results suggest.

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Preventative Health

Fully functional artificial skin being trialled by Sydney researchers

A full thickness artificial skin which should dramatically reduce the pain and scarring associated with skin grafts is being developed by Sydney researchers.

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New Zealand

Woman in HIV shock wins right to ACC appeal

A woman made sick from the shock of finding out that her lover of four months had HIV has been cleared to continue her five-year battle for ACC compensation.

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IHC confronts 'huge issue' of disabled living longer

Better medical care means intellectually disabled New Zealanders are living longer, raising questions about how their changing needs will be met and who will care for them.

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Rehab centre head on \$1.37m fraud charges

The former manager of the Vincentian drug and alcohol rehabilitation centre in Christchurch has been charged with dishonestly obtaining subsidies totalling \$1.37 million.

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Kids' cold medicines warning

Cough and cold medicines intended for children under 12 years old are to be sold only in pharmacies.

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Midwife in bungled birth had drug issues

A midwife who initially cared for a Hamilton woman whose baby later died in a 'bungled' delivery by a junior colleague had lost her practising certificate after being admitted to a drug and alcohol addiction clinic.

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Coroner urges "body snatching" mediation

Coroners should be given new powers to intervene when grieving families cannot agree on what happens to a body, a coroner says.

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