

Minter Ellison Health News

22 July 2009

Caselaw

New South Wales

Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service (No.2)

The parties entered an agreement whereby Macquarie International Health Clinic Pty Ltd ('Macquarie') leased property from Sydney South West Area Health Service ('Area Health') upon which it was to construct a private hospital and car park. That agreement was terminated.

This case was a cross-claim by Area Health against Macquarie for rent payable and damages suffered as a result of the actions of Macquarie, for a total of around \$2M. Macquarie denied liability for the counter-claim and claimed a refund against Area Health of \$5,338,080 on restitutionary grounds for improvements it had made to Area Health's land.

In the New South Wales Supreme Court, Nicholas J ordered Macquarie to pay Area Health a sum of \$33,000 per month from 1 July 1999 to 17 March 2000, plus interest for rent payable under the lease and \$802,909.74 plus interest in damages. Macquarie's claim for repayment of \$5,338,080 failed.

[Click here for decision](#)

South Eastern Sydney and Illawarra Area Health Service v Nikolis

Ms Nikolis had been employed by the South Eastern Sydney and Illawarra Area Health Service ('the Health Service') as a technical officer in the blood bank laboratory. During the course of her probation period with the Health Service, because of responsibility to care for her sick child and her own illness, Ms Nikolis was late for work, or absent, on a number of occasions. The Workers Compensation Commission of New South Wales ('the Commission') heard evidence that Ms Nikolis' manager, Mr Pillai, dealt with Ms Nikolis' tardiness and absence in a way that made Ms Nikolis feel threatened, intimidated, harassed, bullied and victimised. The Health Service submitted that Mr Pillai merely undertook reasonable performance appraisal and that the Health Service was not liable for Ms Nikolis's injury.

The Commission's arbitrator found that Ms Nikolis had sustained a psychological injury in the course of her employment with the Health Service because of bullying, harassment and intimidation by Mr Pillai.

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LAWYERS

The Health Service sought leave to appeal the arbitrator's decision and sought leave to tender fresh evidence to the Commission. Leave to appeal was granted, but leave to tender fresh evidence was denied. In his reasons, Deputy President Roche stated that the arbitration process is "not a trial run where the parties can await the result and then seek to tender on appeal evidence that could have been tendered at arbitration".

The appeal was dismissed.

[Click here for decision](#)

Gorman v NSW Medical Board

Dr Frank Gorman obtained his MBBS in 1955 and became an ophthalmologist in 1976. He had been working night shifts at a medical centre in Bankstown, and from rooms at Marrickville, for around eight years until his registration was suspended by the NSW Medical Board from 5 December 2008. Dr Gorman appealed this decision to the Medical Tribunal of NSW.

For around 30 years, Dr Gorman subscribed to a scientifically-unproven medical philosophy believing that there is an ubiquitous illness affecting every person in the world which is treatable by spinal manipulation. According to Dr Gorman's belief, the illness is caused by impaired blood supply to the brain, which can be improved by vigorous spinal manipulation, ideally performed under anaesthetic.

Following a long series of disciplinary hearings and investigations into Dr Gorman's practices between 1986 and 2009, as a result of which conditions were imposed on Dr Gorman's practice, the NSW Medical Board found that the health and safety of the public would be endangered if Dr Gorman were to be permitted to practice at all.

On appeal, the Medical Tribunal of NSW affirmed the decision of the NSW Medical Board and refused to permit Dr Gorman to return to practice. The Tribunal found that Dr Gorman: has contempt for doctors who practice 'orthodox' medicine; is unlikely to give impartial advice to patients to enable them to give informed consent due to his adherence to his philosophy; and, is likely to unnecessarily expose patients to the risk of spinal manipulation because they should have been afforded some other treatment.

[Click here for decision](#)

News

Biotechnology

CSL taken to court over price fixing claims

The fallout of CSL's failed \$US3.1 billion (\$4 billion) takeover bid for rival plasma therapeutics firm Talecris Biotherapeutics has spilled into the courts, with a Missouri hospital suing CSL and rival Baxter over allegations they conspired to fix and raise prices for blood plasma products.

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E-Health

Report recommends online health database

Australians would be able to examine their own medical records online and would have access to subsidised dental care under a health system overhaul recommended to the Federal Government.

[Click here for story](#)

General Health

Dental Medicare a bridge too far

Australians have good equity in health, but not for diseases of the mouth. Although it is worrying that dental disease worsens diabetes, heart disease and stroke, reportedly at least 30,000 Australians are hospitalised yearly for preventable dental infection.

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Cochlear forecasts 13pc rise in net profit

Cochlear Limited has cut its expectation of "core" earnings growth to 12 per cent, from a February forecast of 15-20 per cent. The earnings downgrade is for the year ended June 30.

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[Click here for ASX market update](#)

[Click here for interview with CEO](#)

[Click here for ABC transcript](#)

Hospitals

The State of our Public Hospitals – June 2009 report

The Commonwealth Government has released a report detailing public hospital information at national, state and territory levels.

[Click here for Dept of Health report](#)

Pathology

Lab-test revolt to hit costs in health

Private pathology corporations are seeking doctors' help to mount a mass retreat from bulk-billing - a move expected to land many patients with out-of-pocket costs averaging \$40, or up to \$100 in some cases, for tests they typically now receive for free.

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Upward trend tests resources: diagnostics and tests

Can you have too much of a good thing? The latest figures from the most authoritative snapshot survey of general practitioner behaviour certainly suggest you can, at least when it comes to ordering diagnostic and other tests.

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Sonic Healthcare to buy German laboratory company

Pathology and diagnostics group Sonic Healthcare Limited is set to buy German laboratory company, Lademannbogen Laboratory for 11 million euros.

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[Click here for ASX announcement](#)

Pharmaceuticals

Canberra fails to follow the online script

Doctors and pharmacists have lined up behind rival electronic prescribing systems that will eventually spell an end to paper scripts.

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Preventative Health

Ten die, and pregnant women told to don masks

Ten people are dead from swine flu in NSW - including a nine-year-old boy. The Royal Australian and New Zealand College of Obstetricians and Gynaecologists has told pregnant women to wear masks in public and stay at home if possible.

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Five swine flu deaths, with more expected

Sydney's swine flu crisis has worsened with the death of a fifth victim and 32 people fighting for their lives in intensive care. The virus, once thought no more deadly than seasonal influenza, has become 'unstoppable', the WHO says, but Australians may wait three months for a vaccine.

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New Zealand

Swine flu deaths rise to seven

The number of deaths involving swine flu has risen to seven, after a Taranaki man, who died earlier this week, was confirmed as having had the illness.

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Cancer claims 'mislead'

The owners of a new-age health centre who claimed they could 'undo or neutralise' cancer have been branded ignorant and accused of preying on the 'desperately unwell'.

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Measles outbreak a mystery

Health authorities in Christchurch are trying to trace a measles vaccine to find out whether it was faulty after six people who had been immunised caught the disease.

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Baby care units reach overload

Intensive care services for the most fragile newborn babies are overloaded, squeezed between growing demand and staff shortages.

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IHC admits fault in 2007 death

IHC has taken responsibility for the death of intellectually disabled man Lewis Munro, 51, who went missing in dense bush near Te Kuiti in 2007.

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Non-certified urologist under scrutiny

The Medical Council of New Zealand has accused an Invercargill urologist and Southland District Health Board member of practising without a certificate. The doctor says he will defend the claims.

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