

Minter Ellison Health News

2 September 2010

Case law

Victoria

Antunovic v Dawson & Anor

Ms Antunovic suffered from a mental illness for which she was being treated for involuntarily under a community treatment order issued pursuant to the *Mental Health Act 1986* (the Act). Under conditions imposed by her treating doctor (Dr Dawson) and the Community Care Unit where she was receiving treatment, Ms Antunovic was allowed to go on leave during the day but was required to return to the unit each night. Dr Dawson and the unit refused numerous requests made by Ms Antunovic to go home and live with her mother. Ms Antunovic claimed that her common law right to personal liberty was being infringed and applied to the court for a writ of habeas corpus to release her from the "restraints".

No private person or public authority may impose restraints on the personal liberty of an individual unless it is sanctioned by law. Any person whose personal liberty is unlawfully restrained has the right to seek from the court a writ of habeas corpus for release. The court's habeas corpus jurisdiction extends to all unlawful restraints upon a person's freedom of movement which is not shared by the public generally. It applies to partial as well as total restraint. There is a presumption that the restraint is prima facie illegal at common law. The onus is on the respondent to justify the legality of the restraint.

Ms Antunovic was required to live at the unit, return each night, and prevented from living with her mother. This is a clear restriction of her freedom of movement that is not shared by the public generally. The provisions of the Act provide that under a community treatment order a person is to be treated in the community rather than a mental health facility. Where it becomes no longer appropriate for a person to be treated in the community the Act provides procedures for revoking the treatment order or where necessary varying the terms of an order to include the imposition of a residence condition. There is no other power to instruct a person who is under a community treatment order to live at a directed place.

Ms Antunovic's community treatment order did not contain a residency provision. Consequently the unit and the doctor did not possess the lawful authority to restrain Ms Antunovic and direct her where to live. There was no evidence that Ms Antunovic would

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ME_87804306_1 (W2003)

not take her medication nor was she a danger to herself or others. It was concluded that the restraints on Ms Antunovic's freedom of movement were not authorised in law. Orders were made for Ms Antunovic's immediate release.

[Click here for decision](#)

NSW

Finding after an inquest into the death of Kate Therese Bugmy

Kate Therese Bugmy was born with cerebral palsy, epilepsy and an intellectual impairment, she was unable to speak or mobilise independently. Ms Bugmy died in June 2007 at Broken Hill Base Hospital, aged 26, she was severely malnourished and suffering from infected ulcers. Ms Bugmy lived and was cared for at home by her family. Ms Bugmy's father, her primary care giver, died in early 2004. After his death her mother Daphne, who was unwell and her sister, who was pregnant, were less able to cope with her needs. Ms Bugmy's health and immobility began to decline, she lost weight, and developed pressure ulcers.

In March 2005 Ms Bugmy's mother sought advice from a nurse at Maari Ma Clinic about dietary supplements and pressure care. In April 2005 the Department of Aging, Disability and Home Care (DADHC) reopened their file on Ms Bugmy after a referral from the clinic. The DADHC assessed Ms Bugmy as being in need of urgent assistance, and some respite was provided. Staff noted that Ms Bugmy had pressure points, weight loss and that her mother was not coping. Her mother requested a lifter to help assist with care, and staff from the DADHC forwarded the request to the manager. Further notes appeared regarding the lifter in DADHC documents up until Ms Bugmy's death, but no lifter was provided.

In May 2007 Ms Bugmy had two weeks in respite at Algate House. Several persons providing care expressed shock at her loss of weight and appearance of unhappiness. Ms Bugmy was barely eating and constantly whimpering, her mouth and teeth were noted to be in a poor state, and she was prescribed antibiotics for a suspected mouth abscess. In June her mother again sought the advice of Maari Ma in regards to nutritional needs and 'sores' that had developed. The nurse at the clinic offered to make a house call but her mother refused. In mid June Ms Bugmy's uncle (Darren) came to the house to visit Ms Bugmy. Darren immediately contacted Maari Ma, and the Doctor on call at the time threatened to call the Guardianship Board if Ms Bugmy was not immediately brought to the clinic. Ms Bugmy was transferred from the clinic to Broken Hill Base Hospital. The doctor at the hospital found her to be extremely sick, grossly underweight, dehydrated, unconscious and with extensive infected ulceration of the skin on the hips and back. Ms Bugmy remained in hospital until she died on June 28 from sepsis and complications of cerebral palsy.

The Coroner held the "under-resourced, under-staffed and fragmented healthcare system" partly responsible for Ms Bugmy's death. The risk to her health should have been identified earlier had there been some co-ordination between the various service providers (Maara Ma, DADHC and respite care workers). The Coroner noted that services available in far western NSW are "dangerously strained". A lifter was never provided to help with mobility nor was a pressure-relieving mattress. Her family was not advised of the dangers of untreated bed sores, and her weight was not monitored. No checks were made between Ms Bugmy leaving respite care and her presentation at hospital. The DADHC case worker was not aware of Ms Bugmy's deteriorating condition,

and she was not informed of the concerns expressed by those caring for Ms Bugmy at the last respite.

The Coroner recommended that a case worker together with a general practitioner needs to be allocated to disabled people in remote areas, to ensure services are coordinated and annual health care plans are developed. Protocols should be developed for recognising concerns for early consideration for an application to the Guardianship Tribunal (weight loss, pressure sores and refusal of services). Further, the allocation of human resources within Broken Hill needs to be reviewed to ensure that case workers are able to complete three monthly reviews on each client.

[Click here for decision](#)

Legislation

Victoria

Victorian Civil Procedure Act 2010

The *Victorian Civil Procedure Act 2010* (the Act) received Royal Assent on 24 August. The Act will be effective from early 2011. Under the Act the majority of civil disputes will be required to undergo pre-litigation before commencing proceedings in Victorian Courts. The parties will have to make a genuine attempt to resolve disputes without court proceedings. There are obligations imposed on all litigants, lawyers and insurers to co-operate with the other parties, use reasonable endeavours to narrow issues, minimise delay and ensure there is a proper basis for alleging or denying matters. Cost penalties may be imposed for breaching these obligations or pre-litigation requirements.

[Click here for Act](#)

Mental Health Amendment Regulations 2010 No. 81 (Vic)

The Mental Health Amendment Regulations 2010 No.81 (Vic) amend the Mental Health Regulations 2008 No. 111 (Vic). According to r. 1 (Objective) the amending Regulations make amendments as a result of the enactment of the Health Practitioner Regulation National Law (Victoria) Act 2009 No. 79 (Vic), which implements the Health Practitioner Regulation National Law Regulations 2010 No. 42 (Vic) as a law in Victoria.

Specifically, the amending Regulations replace references to "psychologist" with "registered psychologist" and define "registered psychologists" as a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession, other than as a student. The amending Regulations commenced on 24 August 2010.

[Click here for Act](#)



News

Regulatory

HQCC alert: poor follow up and review of patients in hospital day surgery clinics

The Queensland Health Quality and Complaints Commission (HQCC) has raised an alert about the lack of systemic flow to the follow up and review of patients who have undergone procedures in hospital based day surgery clinics. This has led to instances of serious health issues not being identified, resulting in delayed treatment and permanent harm. The issues that have been identified include:

- confusion about who has responsibility for managing and follow up of patient care (general practitioner or clinic specialist);
- lack of clear, documented procedures for referral, follow up and review; and
- long waiting lists for recall negatively impact on the timelines of review for patients with abnormal findings.

The HQCC expect that all private and public Queensland hospitals identify whether the above concerns exist within their facility and to take action to remedy the issues.

[Click here for review](#)

Aged Care

Japara executive held insolvency fears

A senior executive at 2800-bed nursing home group Japara Holdings feared the company was insolvent in May last year, court documents show.

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Biotechnology

Sanofi closer to hostile bid

Sanofi-Aventis SA opened the door to a hostile bid for Genzyme Corp. after going public with an \$18.5 billion cash offer for the U.S. biotechnology company and saying it would "consider all alternatives" to complete a deal.

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General Health

NSW 'too slow' to integrate disabled people

The NSW Ombudsman has criticised the Australian Government for the slow pace of moving people with disabilities out of institutions and in to the community.

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Medical intern shortage at crisis point - AMA

The internship shortage for medical students has reached crisis point, says the Australian Medical Association.

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There was no room at the hospital for gravely sick Connor

The parents of a dead toddler have lodged a complaint with the NSW Ambulance Service, saying paramedics arrived at their house but told them there was no point taking their ill son to hospital because there were no spare beds.

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Hospitals

Surgeons working up to 80 hours a week

The NSW Health Department has admitted some surgeons might be working up to 80 hours a week in public hospitals.

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Ramsay Health Care expects growth as profit jumps 39pc

Ramsay Health Care Limited said full-year net profit rose 39 per cent as its offshore operations boosted the bottom line.

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Pathology

Sonic Healthcare confident as profit rises 71pc

Sonic Healthcare Limited has reported a 71 per cent rise in full year net profit.

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Preventative Health

Drug breakthrough could change heart failure treatment

Medication that greatly lowers the heart rate can cut by a quarter the chance people with heart failure will die from the progressive condition, according to research that experts expect will change standard treatment.

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Alcohol misuse costs Australia \$36bn a year

A new study has put the annual cost of excessive alcohol consumption in Australia at \$36 billion, along with a massive human toll.

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Trial for stroke victims

Stroke patients will be next to benefit from the expansion of acute telemedical services in a Victorian trial.

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United move to help elderly after falls

As the population ages, the sharp rise in elderly people injured in falls will put enormous stress on the hospital system unless they receive early treatment by specialist medical teams, the NSW Health Department says.

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New Zealand**Midwife barred from practising**

A Christchurch midwife has been barred from practising after being found guilty of professional misconduct.

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GP suspended for lying about qualifications

An Auckland GP has been suspended and fined by the Health Practitioners Disciplinary Tribunal after lying about his qualifications.

[Click here for full story](#)

Suspension by DHBs 'not taken lightly'

A decision by some district health boards (DHBs) to suspend employees involved in industrial action is not being taken lightly, a spokesperson for the DHBs says.

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Swine flu deaths climb to 15

Swine flu deaths are climbing in New Zealand, with 15 linked to the pandemic influenza H1N1 so far this year.

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Doctor finally says he's sorry

Controversial GP Dr Suresh Vatsyayann has apologised and withdrawn the comments that saw him suspended from the Waikato District Health Board eight months ago.

[Click here for full story](#)

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