

# Minter Ellison Health News

5 February 2010

## Case law

### Queensland

#### ***Inquest into the death of Elles John Pont***

Elles John Pont ('the deceased') while a prisoner at the Wolston Correctional Centre commenced to suffer severe chest pains. Correctional Service Officers were alerted to his condition by other prisoners. When the officer attended the deceased's cell, he was bent over and supporting himself on the railing on the outside of the catwalk. Two nurses attend promptly. By this time the deceased was sweating, groaning, having difficulty breathing and turning blue. He was transferred to the Princess Alexandra Hospital by ambulance, but despite attempts to revive him, he passed away within an hour of arriving at the hospital.

An autopsy examination confirmed that the cause of death was acute myocardial infarct due to or as a consequence of coronary atherosclerosis, and that there was no evidence of any other pre-existing natural disease which may have contributed to death.

The Coroner concluded all Correctional Services staff had followed medical emergency protocols. Staff and QAS paramedics did all within their power to provide assistance to the deceased. Due to the sudden and unexpected death, there was no suggestion that staff should have conducted themselves any differently in their treatment of the deceased. Accordingly, the Coroner concluded that there was no basis on which to make any preventative recommendations.

[Click here for decision](#)

### Western Australia

#### ***Hammond v Heath***

Mr Michael Hammond ('the appellant') had a series of bowel surgeries between 1997 and 2001. In May 2001, Dr Dougal Heath ('the respondent') performed an operation on the appellant's bowel that required the insertion of a section of Marlex mesh between the peritoneal lining and the muscle immediately outside the peritoneum. Despite this surgery, the appellant continued to suffer severe abdominal pain and further surgery was ordered. The respondent discovered at this time that the small bowel had herniated and become affixed to the Marlex mesh. A series of further surgeries were undertaken due to the failure to recuperate. The symptoms continued during 2001 and 2002. The appellant's general practitioner then referred him to another surgeon, Dr Hool. In

February 2003 Dr Hool performed further abdominal surgery, during which he found a fistula which was associated with the Marlex mesh.

There were three relevant grounds of appeal from the original decision of the Commissioner of the District Court ('Commissioner').

The first ground related to the Commissioner's finding that there was no duty to warn of the risks associated with allowing the mesh to remain in situ following its insertion in May 2001. On appeal, the Court of Appeal ('Court') agreed with the Commissioner's finding that the facts of this case did not sustain the conclusion that the appellant had a duty to warn of the risks associated with allowing the mesh to remain in place. There was no failure to warn because there was no evidence that, at that time, and in those circumstances, allowing the mesh to remain would reasonably have been thought to pose any appreciable risk. In fact, there was evidence that the mesh was a valuable surgical aid. In the absence of complications, removal of the mesh following surgery would not ordinarily be contemplated as it would have been unwise to protract major and complicated surgery, and exacerbate the risks associated with that surgery, by undertaking the removal of the mesh.

The second ground asserted that the Commissioner should have found that if the appellant had been warned of the risks involved, he would have directed that the mesh be removed. This ground necessarily failed by virtue of the first being unsuccessful.

The third ground concerned the failure to remove the mesh during later surgery. The Court found the respondent was under no obligation to later remove the mesh. The question of whether or not the mesh should have been removed was a matter for clinical judgment of the surgeon to be made in all the circumstances. The appellant had been unwell for the three months prior to the operation in May 2001 and was malnourished. The respondent testified that he was concerned for the appellant's life and that the continued presence of the mesh was, at most, a nuisance which could be dealt with at a later date.

The appeal was unsuccessful on all grounds and was dismissed.

[Click here for decision](#)


## New Zealand

### ***Health Practitioners Disciplinary Tribunal: Savita Mistry, registered nurse***

A charge of professional misconduct was brought against Mrs Mistry, relating to the care given by Mrs Mistry to three residents and the adequacy of information given by her to the Health and Disability Commissioner ('the Commissioner'). Mrs Mistry accepted all but two of the particulars of the charge, and that the undisputed particulars amounted to professional misconduct.

The disputed particulars involved allegations that Mrs Mistry had rewritten an incident report, added information and had staff alter and/or create documentation in order to mislead the Commissioner as to the adequacy of documentation completed for a patient, Mrs N.

The Health Practitioners' Disciplinary Tribunal ('the Tribunal') found that the factual basis for each of the undisputed particulars was made out.



The Tribunal was satisfied that the established conduct amounted to negligence, misconduct, and the bringing of the profession into disrepute, given the nature of the issues of poor record keeping, poor care and poor management. In considering a disciplinary sanction, the Tribunal took into account the period of time over which the conduct occurred (some 25 months), the fact that the overall charge related to the care of three (not one) elderly residents, and the fact that Mrs Mistry was in a significant position of responsibility.

The Tribunal found that all particulars together amounted to professional misconduct. It imposed a period of supervision upon resumption of Mrs Mistry's practice, a fine of \$7,500 and an order of \$18,500 for costs. The Tribunal also censured Mrs Mistry and recommended a competence review before the re-issue of any annual practising certificate.

[Click here for decision](#)

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## Legislation

### Commonwealth

#### ***Therapeutic Goods Amendment Regulations 2010 (No. )***

Amendments to the *Therapeutic Goods Regulations 1990* (Cth), that are required to support the new scheduling arrangements, were released on Friday 29 January 2010 for public consultation. Submissions should be delivered to the Therapeutic Goods Administration before 5pm on the closing date, Tuesday 16 March 2010.

[Click here for TGA media release](#)

[Click here for draft regulations](#)

[Click here for Therapeutic Goods Regulations 1990](#)

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## News

### Biotechnology

#### **CSL inks exclusive R&D deal with Patrys**

CSL Limited has inked an agreement with Patrys Limited that wins it exclusive rights to research and develop products from its antibodies.

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### E-Health

#### **Group demands funds, plans before e-health law**

The Australasian College of Health Informatics has criticised legislation enabling the creation of an individual health identifier for all Australians.

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## General Health

### **We need tough treatment for high healthcare costs**

Treasurer Wayne Swan will have some good news when he releases the third intergenerational report: many more of us can expect to live longer and healthier lives. But, it will come at a cost that the elderly do not expect to pay for their healthcare.

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### **Training fails to prepare new doctors**

Medical students are reportedly emerging from the nation's universities feeling inadequately prepared to deal with crucial tasks such as calculating safe drug doses and writing prescriptions.

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[Click here for AMA release](#)

### **Mental health funding to double**

Federal Health Minister Nicola Roxon says funding for mental health care programs will double over the next four years, amid concerns that its rebate scheme is not reaching those in need.

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### **Board knew of surgeon's troubled past**

The NSW Medical Board reportedly knew that a doctor facing serious drug supply charges in relation to the death of a woman in his apartment last year had a "severe" addiction to cocaine as far back as 2004.

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### **Bowel cancer screening tests reversed after bungle**

Thousands of people who used faulty bowel testing kits as part of the Federal Government's \$103 million screening program could be facing a delayed cancer diagnosis after they received positive results from the replacement kits.

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### **Performance benchmarking of Australian Business: OHS**

A draft report released by the Productivity Commission has identified differences in burdens imposed on business by occupational health and safety regulatory regimes across the states, territories and the Commonwealth. Submissions close on Monday 22 February 2010.

[Click here for draft report](#)



**Integrated funding vital to better health delivery**

Medical research institutes, universities and hospitals have achieved something unique: heated agreement about seizing the opportunity to improve collaboration between the sectors. Opinion article by Garry Jennings of the Baker IDI Heart & Diabetes Institute in Melbourne.

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## Health Insurance

**Government has 'secret private health plan'**

The Federal Government says its plan to means test the private health insurance rebate is worth at least \$100 billion.

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## Hospitals

**A poor state of health: NSW hospitals**

Public hospitals in NSW are reportedly the worst performing in the country when it comes to causing death and serious injuries to patients.

[Click here for story](#)

[Click here for Productivity Commission's Report on Government Services 2010](#)

**Roxon flags bigger role for private hospitals**

Private hospitals could be paid by the Federal Government to take public patients and boost competition between the two sectors, Health Minister Nicola Roxon said.

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## Preventative Health

**Lift cigarette prices to \$20 a packet**

Prime Minister Kevin Rudd is being urged to increase the price of cigarettes to \$20 a packet and raise an extra \$2 billion in taxes if he is serious about tackling a health funding crisis in Australia.

[Click here for story](#)

## Regulatory News

**Cataract rebate agreement**

AMA President, Dr Andrew Pesce, has congratulated the Government and the Australian Society of Ophthalmologists on a mutually satisfactory outcome from their negotiations over changes to the Medicare rebate for cataract surgery.

[Click here for the story](#)

[Click here for government media release](#)



**ACCC moves quickly to block collective bargaining plans before NSW prosthetics tender**

The ACCC has acted to prevent a group of prosthetic service providers from commencing collective negotiations with NSW Health on the terms and conditions of a request for tender.

[Click here for the story](#)

## New Zealand

**Government to appeal decision that carer parents should be paid**

The Government has appealed a decision by the Human Rights Review Tribunal which this month said parents who care for severely disabled adult children should be eligible to receive payment.

[Click here for story](#)

**Hospitals propose preferential treatment**

Two district health boards propose to offer public hospital patients the option of paying for treatment that is not funded by the public health system.

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**Drug gaffe endangers blood-clot patients**

A common blood-thinning drug is being recalled after a manufacturing blunder that could cause thousands of New Zealanders to accidentally overdose.

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**Kiwis want cigarettes banned by 2020**

Half the nation, including smokers, support completely banning cigarettes within 10 years, a study has found.

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**Regulating health professionals**

The Ministry of Health has published a draft policy paper which analyses the criteria for regulating health professions and seeks comment on the proposed new criteria.

The paper outlines the policy principles which are relevant to regulating health professions, discusses the Ministry's current criteria for regulation and those used in similar jurisdictions and proposes revised criteria to assist the Ministry in advising the Minister whether a profession 'proposes a risk of harm' or 'it is otherwise in the public interest' to regulate that profession.

[Click here for the paper](#)

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**Further Information****Brisbane**

Shane Evans

**T** +61 (0)7 3119 6450**Sydney**

Lynne Peach

**T** +61 (0)2 9921 4800**Canberra**

Paul McGinness

**T** +61 (0)2 6225 3257**Melbourne**

Jacinda de Witts

**T** +61 (0)3 8608 2276**Adelaide**

Chris Sweet

**T** +61 (0)8 8233 5406**Perth**

Deborah Templeman

**T** +61 (0)8 9429 7510**New Zealand**

Paul Radich

**T** +64 (0)4 498 5019To email Australian lawyers use [firstname.lastname@minterellison.com](mailto:firstname.lastname@minterellison.com)To email New Zealand lawyers use [firstname.lastname@minterellison.co.nz](mailto:firstname.lastname@minterellison.co.nz)**Disclaimer**

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