

# Health News

## Legal Issues update for the Health Profession



*Snedden Hall & Gallop newsletter is designed for Health Professionals who we deal with to highlight the range of advice we can provide on health law as well as issues that may be relevant to your practice. For answers to all your questions call Richard, Bill or Tanya on 1800 23 1800.*

## Annual Dinner to feature Kate Carnell



This years Health Professionals Dinner promises to be an entertaining evening with special guest speaker Kate Carnell, CEO of the Australian Division of General Practitioners.

Kate's dinner speech will focus on the important issue of "Health in 10 years - What will it look like?"

Known to be never scared of controversy and committed to improving public health policy, Kate's reputation precedes her on health issues. During her political career she legalised brothels, non-commercial surrogacy, decriminalised marijuana and legalised a patient's right to adequate pain relief. She almost managed to instigate a medical prescription heroin trial for users that had failed on other programs.

Appointed Chief Executive Officer of the Australian Divisions of General Practice (ADGP) in October 2004, Kate is excited about the potential of this vast network of grassroots GPs, through their divisions, to influence the direction of primary health care in Australia.

The 2006 Health Professionals Dinner is sponsored by Lexus of Canberra. The dinner will be held at the Lobby Restaurant on Thursday 17 August at 7:00 pm. Tickets are \$60/head and include drinks and a three-course meal. Bookings can be made by calling Susan Blain on (02) 6201 8977. This year table bookings can be made for a discounted rate of \$420 for a table of 8.

## Broker's Investment Losses May be Claimed

Since November 2005, our Litigation team has been busy collating details of losses suffered by a large number of clients in their personal investment portfolios and self managed superannuation funds, whilst they were managed by Mr Eric Hawley, a local broker.

The cases we have looked at so far involve losses of up to \$700,000.00 suffered by clients of all age groups - young businessmen with investment portfolios to self funded retirees. In many cases the consequences of mismanagement were catastrophic.

In one case a client left his broker's office realising he had only \$10.00 to his name and had to walk to Centrelink for assistance.

Our investigations, aided by expert advice from the ANU Law School, have identified numerous breaches of the Corporations Act, ASIC Rules, and the common law requirements of investment advisers who owe a fiduciary duty of care to their clients. Negligent advice and misrepresentation are common factors in all cases.

Whilst many claims have been lodged we are yet to see a positive response from the employers of the broker.

We propose to press for the early resolution of these claims through a commercial mediation process but if all else fails, proceedings will be commenced in the Supreme Court of the ACT.

Our strategy is to explore all avenues of mediation to achieve early, appropriate settlements of the claims. For further information call Bill Andrews on 6201 8987.

## Stamp Duty Relief in Sight

The ACT Government has prepared a plan to reduce or eliminate stamp duty on a number of business related transactions for a bigger slice of the GST Revenue distribution.

While only some of these will occur immediately, it means that one unnecessary and expensive aspect of business transaction will be gone over the next 4 years.

In particular the changes are as follows:

- ✗ Abolition of Stamp Duty on non-real estate business conveyances 1 July 2006
- ✗ Abolition of Stamp Duty on credit arrangements, instalment purchase agreements and rental arrangements 1 July 2007
- ✗ Abolition of Stamp Duty on leases 1 July 2009
- ✗ Abolition of Stamp Duty on non-quotable market securities 1 July 2010

This means that for the sale and purchase of businesses (including the shares in private companies) and the location of leased business premises, there will be no stamp-duty charged by 1 July 2010.

## Immigration Opportunities for Medical Practitioners

Medical Practitioners are identified as one of the groups of occupations most highly in demand in Australia at present. Almost all forms of practitioners, from GPs to Nuclear Medicine Technologists are currently being targeted under the Department of Immigration and Multicultural Affairs' Migration Occupations in Demand List. The result is that great visa opportunities exist both for permanent and temporary residency for doctors (etc) from overseas.

For further information matter, please contact our registered Migration Agents Gerald Santucci (MARN 9256528), or Nicholas Tebbey (MARN 0533386), on 6201 8956.

## How Important is it to Reference Check ?

The engagement of medical practitioners can be fraught with difficulties. Whether the employer is a hospital, major medical facility or small suburban practice a process of credentialing should be a formalised process to ensure that the doctor has the appropriate credentials, and has the skill and competence to perform the job to which it is proposed they will be appointed.

Such processes involve a process of assessment involving a group of persons, appropriately qualified and skilled in the area of medicine in which the potential employee intends to practice undertaking the necessary research, interviews and assessments to ensure the appropriateness of the appointment.

Once engaged, there should be a monitoring of performance and investigation of complaints. Readers would be familiar with the observation made by the Queensland Public Hospitals Commission of Enquiry Report where it was noted that (at paragraph 6.201).

*"Every year in Australia there are huge numbers of adverse outcomes which are iatrogenic in origin; that is, the poor outcome for the patient is caused by the healthcare provider rather than the underlying condition"*

The observation was made to highlight the importance of

health care organisation and practices implementing early warning systems to identify and remedy poor care.

The Enquiry highlighted the fact that the "system" should be the creation of an environment predisposed to preventing, rather than reacting to, poor care.

Observations made by the Commissioner obviously related to a hospital situation. Practitioners should be aware that, as a matter of principle, deviation from these standards (even in private practice) could unnecessarily expose them to risk. It is, therefore, recommended that practitioners ensure that they have policies and practices in place relating to the credentialing, assessment and monitoring of health providers during the course of their engagement.

How thorough are you in checking the qualifications of sessional doctors you wish to appoint? Do you speak with their referees? Do you check with previous employers to ascertain whether there were any issues that you should be aware of? Once engaged do you have a peer review process in place? How do you know whether patients are receiving poor care?

If you cannot answer these questions comfortably you may wish to look at your policies and practices generally.

For more information call Tal Williams at Snedden Hall & Gallop on (02) 6201 8900.