

June 2008

Health News

Legal Issues update for the Health Profession

BEGA BUTCHER REFORM

The New South Wales Government recently introduced the Medical Practice Amendment Bill 2008. The Bill will change the Medical Practice Act 1992 significantly. In some ways, the Bill is a reaction to the highly publicised events surrounding Dr Graeme Reeves, who the media have referred to as the “Bega Butcher”. In turn, the Bill has caused controversy of its own.

This article looks at the changes to the Professional Standards Committees (PSCs), the most controversial aspect of the Bill.

PSCs are historically concerned with reviewing allegations of and making findings in relation to unsatisfactory professional conduct of medical practitioners. By contrast, the Medical Tribunal deals with more serious matters, the subject matter of which may lead to deregistration. If passed in its current form, the Bill will see PSCs change in three major ways:

- PSC hearings will be conducted in public;
- PSC findings will be published to the public;

- Lawyers will chair PSC hearings. Points one and two will occur in the ordinary course of events, but, if it is in the public interest, PSC hearings and findings may not be made public.

The aspect that has caused the most uproar is the third. Medical practitioners are entitled to legal representation before the Medical Tribunal but not entitled to legal representation in front of a PSC hearing. The greater transparency afforded by the Bill may be a welcome change for some, however it is inherently unjust to demand medical practitioners appear before lawyers, in public forums, without the right to legal representation of their own. It is this aspect of the Bill that should be reconsidered before the Bill is passed into law.

The Bill also expands the powers of the Medical Board of NSW and introduces mandatory reporting for medical practitioners.

Graeme Gunn

CHANGES TO ACT NRMA CTP CLAIMS OFFICE

NRMA Insurance has announced that the local Canberra CTP Claims office will be severely cut back, with only a handful of claims staff remaining to look after the small number of claimants who do not have legal representation for their motor vehicle personal injury claims.

All claimants who have solicitors acting for them in their matters can expect that their file will be transferred from the local Canberra CTP Claims office to a CTP Claims office in Sydney. No doubt there will be a period of delay and disruption to claims management during the

period while files are being transferred from one office to another.

Doctors and other treatment providers who are currently sending treatment invoices to the NRMA Canberra office for payment should be aware that they may need to update their records to send treatment invoices to the NRMA Sydney office once the changes have been effected. The changes are expected to take place at the end of June/early July 2008.

Tanya Herbertson

DIFFERENT RESULTS FOR INJURIES IN ACT AND NSW

A recent case we undertook for an injured young girl in NSW underscored the inequity facing injured victims where the accident was clearly caused by someone else's negligence.

Our client, we might call Anne, suffered a serious knee injury when she fell in a dangerous excavation on a footpath in Queanbeyan. The injury led to surgery, long absences from school and significant medical costs for her parents.

Under ACT law she would be entitled to substantial damages to cover her pain and suffering, expenses and costs associated with future surgery and follow up treatment.

However as the accident occurred in NSW the 2002 *Civil Liability Act* limited her claim. That Act established a threshold of 15% of the worst case below which the claimants receives nil for general damages. The 15% threshold is largely proved by medical opinion and Doctors find it very difficult to subjectively estimate each case. Even if their evidence suggests the injury was X% and over the 15% threshold, very little compensation is available until the severity exceeds 33% of the worst case.

Fortunately we were able to negotiate a reasonable result for Anne, however Anne and her parents were unable to understand why there should be such a discrepancy in the rights of victims from one State to another. It is a system that cries out for reform.

Bill Andrews

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WHEN THE CLOCK STARTS TICKING...

When managing a personal injury claim the issue of time limits is always one that has to be considered and reviewed. Often the injured claimant requires their claim to be processed without delay so the insurer can start funding treatment and implement rehabilitation, if appropriate.

For motor vehicle accidents, the injured person has 3 years from the date of the accident before the "limitation period" expires and they are prevented from filing proceedings in Court in relation to their claim for compensation. For children, this three year time period does not start until they turn 18 years old. Similarly, injured workers in the private sphere are also subject to the same time limits. When notifying the insurer of their injury, the claimant must submit a medical certificate with their claim. The timely provision of these certificates is therefore crucial, as it provides the insurer with verification of their claimant's injuries and a guide of what type of treatment and rehabilitation is appropriate. Without these certificates, the insurer is entitled to return the entire claim form until the certificate is completed and delay lodgement and processing of the claimant's claim.

However, in addition to this, there are further rules to assist in the day to day handling of these claims. For motor vehicle accidents or public liability claims the injured person must provide notice within 9 months after the day of the accident or 4 months after they consult a solicitor, whichever is the earlier. It is imperative not to overlook any time limits when dealing with a client who has a personal injury claim. It is also important to note the trigger for launching a claim is a completed medical certificate by the client's treating doctor, which enables the injured person to seek the treatment and claims process.

In reality, it is usually in the injured person's best interests to submit their claim as soon as possible after their injury.

Nerida Dyne

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