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JUDGMENTS

Victoria

Epichealth Pty Ltd v Yang [2015] VSC 516

The Supreme Court has granted an interlocutory injunction to restrain a medical practitioner (the defendant) from practicing within ten kilometres of the plaintiff's clinic in Langwarrin. The Court's orders expressly apply to the Carrum Downs clinic that was recently opened by the company of which the defendant is a director.

Proceedings remain on foot between the parties. The plaintiff alleges that the defendant breached his contract to provide medical services at the plaintiff's clinic. Particularly, the plaintiff claims that the defendant breached the contract's restraint of trade clause by opening and operating the Carrum Downs clinic.

Prior to the primary hearing of the dispute, the plaintiff applied for interlocutory relief to enforce the restraint of trade clause and prevent the defendant practicing at his Carrum Downs clinic. The plaintiff gave evidence that nine patients of its clinic had already become patients of the defendant at the Carrum Downs clinic. On this and other evidence, the Court considered that an injunction was justified.

In its reasoning the Court noted that if the defendant was left to continue his practice, the plaintiff would be permanently deprived of the protection the contract afforded its business. Moreover, the Court considered that the plaintiff had demonstrated a prima facie case; their position that the restraint was valid and enforceable was a "a strong claim". In the circumstances, the Court held that it would not be just to limit the plaintiff's remedy to damages, granting orders to restrain the defendant's practice until midnight on 27 January 2016.

Inquest into the death of GC

The Coroners Court of Victoria has delivered findings from the inquest into the death of GC (a pseudonym). The Coroner recounted the tragic events of 21 January 2012, describing the high speed head-on collision that resulted in the death of both drivers, GC and the driver of the other vehicle. GC had been involved in a police pursuit moments before the collision. The pursuit was terminated shortly after GC entered the off ramp to the Princes Freeway, travelling against the traffic.

Five months prior to the accident, GC was release from prison without condition, having served an eighteen month sentence. He was deemed fit for release without on-going mental health treatment but continued to suffer periods of significant mental illness.

Following his release, GC presented to La Trobe Hospital ED on four occasions. Two days prior to his death, GC was brought to ED after police determined that he urgently required assessment under the Mental Health Act 1986 (the Act). Two practitioners of La Trobe Hospital determined that GC did not meet the criteria for involuntary treatment under the Act.

Among other things, the inquest considered whether La Trobe Hospital's conduct in relation to the events was reasonable and appropriate. The Coroner expressly acknowledged the "difficult position" health services were placed in given the absence of conditions on GC's release from prison. With reference to the statutory criteria for involuntary treatment, the Coroner accepted expert opinion that the La Trobe Hospital's decision to release GC was appropriate and reasonable in the circumstances.

New South Wales (NSW)

Health Care Complaints Commission v Follent (No2) [2015] NSWCATOD 106

Medical practitioner guilty of professional misconduct-held appropriate protective orders are reprimand and strict regime of practice conditions-costs awarded.

[Health Care Complaints Commission v Ahmad \[2015\] NSWCATOD 103](#)

Pharmacy; false dispensing entries; false drug register entries; fabrication of prescriber and patient identities; failure to keep prescriptions; supply of Sch 4, Sch 4D and Sch 8 medications without prescriptions; failure to enter supply in drug register of Sch 8 medications; failure to enter correctly enter receipt of Sch 8 medications in drug register; failure to notify Director-General of loss of Sch 4 and Sch 8 substances; failure to keep key to Sch 8 drugs safe on his person.

United Kingdom

[In the Matter of C \(A Child\) \(Application by Dr X and Y\) \[2015\] EWFC 79](#)

Application for disclosure of psychological, psychiatric reports and other documents - application dismissed

LEGISLATION

Commonwealth

1 October 2015 - **[National Health \(Highly specialised drugs program\) Special Arrangement Amendment Instrument 2015 \(No. 10\) \(PB 94 of 2015\)](#)** - F2015L01619 - PB 94 of 2015 as made.

1 October 2015 - **[National Health \(Efficient Funding of Chemotherapy\) Special Arrangement Amendment Instrument 2015 \(No. 9\) \(PB 95 of 2015\)](#)** - F2015L01604 - PB 95 of 2015 as made.

1 October 2015 - **[National Health \(Paraplegic and Quadriplegic Program\) Special Arrangement Amendment Instrument 2015 \(No. 2\) \(PB 97 of 2015\)](#)** - F2015L01602 - PB 97 of 2015 as made.

1 October 2015 - **[National Health \(Pharmaceutical Benefits - Therapeutic Groups\) Amendment Determination 2015 \(No. 1\) \(PB 99 of 2015\)](#)** - F2015L01600 - PB 99 of 2015 as made.

1 October 2015 - **[National Health \(Listed drugs on F1 or F2\) Amendment Determination 2015 \(No. 8\) \(PB 98 of 2015\)](#)** - F2015L01599 - PB 98 of 2015 as made.

30 September 2015 - **[National Health \(Pharmaceutical Benefits - Early Supply\) Amendment Instrument 2015 \(No. 8\) - specification under subsection 84AAA\(2\) \(PB 93 of 2015\)](#)** - F2015L01540 - PB 93 of 2015 as made.

30 September 2015 - **[National Health Determination under paragraph 98C\(1\)\(b\) Amendment 2015 \(No. 9\) \(PB 92 of 2015\)](#)** - F2015L01539 - PB 92 of 2015 as made.

30 September 2015 - **[National Health \(Price and Special Patient Contribution\) Amendment Determination 2015 \(No. 7\) \(PB 91 of 2015\)](#)** - F2015L01537 - PB 91 of 2015 as made.

30 September 2015 - **[Poisons Standard October 2015](#)** - F2015L01534 - as made.

29 September 2015 - **[National Health \(Originator Brand\) Determination 2015](#)** - F2015L01525 - PB 100 of 2015 as made

29 September 2015 - **[National Health \(Listing of Pharmaceutical Benefits\) Amendment Instrument 2015 \(No. 9\) \(PB 90 of 2015\)](#)** - F2015L01520 - PB 90 of 2015 as made.

REPORTS

Australia. Department of Health

Media releases

30 September 2015 - **[Minister Ley Appointment as Minister for Aged Care](#)** Never has there been a more exciting time to live in Australia. We are living longer, more productive lives.

29 September 2015 - **[Unnecessary, out-dated or unsafe medical services? Tell us about it!](#)** Australians who have undergone a Medicare-funded service, procedure or test they considered to be unnecessary, out-dated or even potentially unsafe in recent years are being encouraged to let the Federal Government know about it.

Private Health insurance (PHI) Circulars

1st October 2015 - [PHI 67/15 Name Change Private Hospital Information](#).

29th October 2015 - [PHI 66/15 Private Same Day Hospital Information](#).

Australia. Health Practitioner Regulation Agency (AHPRA) and the boards

1 October 2015 - [AHPRA Melbourne office closed on Friday 2 October 2015](#)

The AHPRA Melbourne office will be closed on Friday 2 October 2015 due to the Grand Final Friday public holiday.

28 September 2015 - [Online renewal is now open for 12 health professions](#). More than 155,000 health practitioners are due to renew registration by 30 November.

Australia. National Health & Medical Research Council (NHMRC)

1 October 2015 - [New Australian partnership with United States to advance brain research](#)

30 September 2015 - [Interview with International Innovation - Levelling the field](#)

30 September 2015 - [Interview with International Innovation - Stimulating health research](#)

New South Wales. Ministry of Health

Media Releases

1 October 2015 - [NSW Health warns viral gastroenteritis outbreaks on the rise in childcare centres and aged care facilities](#)

30 September 2015 - [Byron Central Hospital marks another key milestone](#)

28 September 2015 - [Dream come true: New era for St George Hospital Sleep Disorders Laboratory](#)

27 September 2015 - [NSW Government Eases Cost Burden For Patients With Cancer And Chronic Conditions](#)

Policy Directives & Guidelines

[Kidney Donation - Living \(including Directed and Non-Directed Donation\)](#) PD2015_0 28/09/2015

Publications

1 October 2015 - [Changes to Co-Payments for Section 100 Highly Specialised Drugs and Section 100 Injectable and Infusible Chemotherapy Medicines in NSW Flyer](#)

1 October 2015 - [Changes to Co-Payments for Section 100 Injectable and Infusible Chemotherapy Medicines in NSW Poster](#)

24 September 2015 - [HealthStats NSW: Privacy Issues and the Reporting of Small Numbers](#)

Information Bulletins

[Changes to Section 100 co-payments in NSW](#) IB2015_058 30/09/2015

[Notification of Acute Rheumatic Fever and Rheumatic Heart Disease - the NSW Public Health Act 2010](#) IB2015_057 29/09/2015

Queensland. Department of Health

30 September 2015 - [New disability housing in Bundaberg opens its doors](#). An innovative and accessible unit complex for people with disability, who have aging parents, has officially opened its doors in Bundaberg today.

30 September 2015 - **Specialist program helps GCUH midwives identify domestic violence victims.** Gold Coast University Hospital midwives are being trained to not only identify potential victims of domestic violence but steer them towards legal, financial and accommodation support. Gold Coast Health Midwifery and Nursing Education Director Dr Kathleen Baird is overseeing the new midwifery training program, which targets domestic violence issues and education during the antenatal process. She said midwives were being trained to not only ask if a woman was a victim of domestic violence but the signs to look for, how to pose the question and how to respond if they identify an issue.

29 September 2015 - **Roundtable: Emergency department access in Cairns.** On 29 September 2015 Minister for Health and Minister for Ambulance Services, The Honourable Cameron Dick MP, convened a roundtable meeting in Cairns to discuss issues relating to emergency and ambulance access to the Cairns Hospital. The meeting brought together more than 30 stakeholders including clinicians, local members of parliament, executive healthcare professionals, ambulance services personnel, union representatives and other health system stakeholders.

29 September 2015 - **Minister shows support for Queensland's dedicated carers.** Disability Services Minister Coralee O'Rourke today met with Carers Queensland, ahead of this year's National Carers Week, to discuss a range of important issues and challenges for carers.

28 September 2015 - **Queensland police launch Australian-first Amber Alert system.** Queensland will become the first Australian state to launch an Amber Alert system to help locate abducted or high-risk missing children in imminent danger, Police Minister Jo-Ann Miller announced today.

25 September 2015 - **NDIS set to improve lives of Northern Queenslanders.** The National Disability Insurance Scheme (NDIS) will start making a difference in northern Queensland from early 2016, the Australian and Queensland Governments announced today.

Health Ombudsman Queensland

1 October 2015 - **Annual Report 2014-15—Our first year of listening, responding, resolving.** The Office of the Health Ombudsman (OHO) Annual Report 2014-15 reflects the period 1 July 2014 to 30 June 2015. This annual report includes detail of the activities undertaken in the first year of operation. It provides an overview of the objectives and strategic direction of the office, and details the required financial expenses during the period.

28 September 2015 - **Investigation report Gold Coast Hospital and Health Service September 2015.** The following relates to a complaint made in 2014 to the Health Quality and Complaints Commission (HQCC). The complaint was made by the daughter of a patient regarding the health service her late mother (the patient) received from the Gold Coast and Robina hospitals between 28 March 2013 and 25 June 2013. The patient died on 25 June 2013 while in the care of the Gold Coast Hospital.

27 August 2015 - **Annual assurance plan 2015-16 – Monitoring the performance of the Australian Health Practitioner Regulation Agency and the National Boards.** This annual assurance plan outlines the Health Ombudsman's mandate, planning framework and proposed assurance activities to monitor and report on the performance of the AHPRA and the 14 National Boards in their functions relating to the health, conduct and performance of registered health practitioners in Queensland for 2015–16.

South Australia. (SA) Department for Health & Ageing

1 October 2015 - **Innovative solutions sought for medical device challenge.** The State Government is encouraging companies to put forward innovative ideas to help with the safe and targeted removal of tumours. The government's Small Business Innovation Research (SBIR) Pilot Program is offering research grants of up to \$100,000 to support local small to medium enterprises to develop and test new products and services which solve specific challenges. Health Minister Jack Snelling says SA Health clinicians working on the front line of healthcare have suggested the development of a custom-built bimodal electric tissue ablation (BETA) technology with monitoring probe.

28 September 2015 - **Call to reverse Seaford ambulance station location decision.** The State Government is calling on Onkaparinga Council to immediately reverse its decision to reject the proposed site for the new Seaford ambulance station. Minister for Health Jack Snelling said he was mystified as to why the Council had rejected the proposed location given its proximity to the existing local Country Fire

Service station. “I’m extremely surprised and disappointed with the Council’s decision,” Mr Snelling said. “The proposed site is situated next door to the Seaford Country Fire Service station on Seaford and Commercial roads – it is the most appropriate location for the new ambulance station.

28 September 2015 - **SA researchers pursue spinal treatment for motor vehicle accident victims.** The South Australian Health and Medical Research Institute has received a \$250,000 State Government grant to find revolutionary solutions to spinal cord injuries from vehicle accidents. Minister for Health Jack Snelling said the Lifetime Support Authority awarded six South Australian research teams with funding, as part of its inaugural research grant program. “This research program has dedicated \$500,000 to foster high-quality treatment and support for people catastrophically injured in motor vehicle accidents,” Mr Snelling said. “The grants back researchers to study a diverse range of areas, which have the potential to benefit people who sustain serious injuries including paraplegia, quadriplegia or brain injuries.

25 September 2015 - **Crows champion helps spread mental health message.** Adelaide Crows champion James Podsiadly will help spread the message about mental wellbeing as this year’s South Australian Mental Health Week ambassador. Minister for Mental Health Jack Snelling said Podsiadly is committed to sharing his experiences and getting the message out to the community to help reduce the stigma surrounding mental health.

Tasmania. Department of Health & Human Services

1 October 2015 - **An Additional \$25 million for more elective surgeries.** The Hodgman Liberal Government is fixing the broken health system so that Tasmanians can have access to the best quality health care.

25 September 2015 - **Start of RHH Forecourt Works.** Construction of the temporary inpatient facility which is the “game-changer” in the rescued Royal Hobart Hospital will start.

Victoria. Department of Health

30 September 2015 - **Launch of Victorian-first Independent Mental Health Advocacy Service.** Minister for Mental Health Martin Foley today launched a new independent advocacy service for people with a mental illness. The Independent Mental Health Advocacy service, to be run by Victoria Legal Aid, is the first of its kind in Victoria. It was developed with strong consumer input to provide independent advocacy for public mental health patients undergoing compulsory treatment. The service aims to help compulsory patients take a greater part in decision-making about their treatment. It will provide face-to-face and telephone advocacy services.

30 September 2015 - **Ken Lay appointed new Chair of Ambulance Victoria.** Highly respected former Victoria Police Chief Commissioner Ken Lay APM has been appointed Chair of the new Board of Ambulance Victoria. Mr Lay will take on the role from 1 December, overseeing and managing Ambulance Victoria’s service delivery, quality and performance until mid-2018.

Western Australia. (WA) Department of Health

Media Releases

30 September 2015 - **Hats on to help fund mental health research.** Mental Health Minister Helen Morton today urged everyone to don a hat to raise awareness of mental health challenges and help Australian Rotary Health raise funds for mental health research.

29 September 2015 - **Accommodation for Goldfields cancer care.** Goldfields-based Ellen Page has become the first cancer patient to benefit from new purpose-built cancer accommodation in Kalgoorlie.

29 September 2015 - **'Fight the Bite' mozzie campaign launched.** Residents of the Peel region are being encouraged to 'Fight the Bite' as part of a new campaign to reduce the incidence of mosquito-borne disease.

25 September 2015 - **Another one bites the dust in mosquito fight.** Residents of the Peel region are being encouraged to "Fight the Bite" as part of a new campaign to reduce the mosquito population in the region and the incidence of mosquito-borne disease.

Reports & Publications

25 September 2015 - [Annual reports](#) for the Department of Health, Metropolitan Health Service and WA Country Health Service.

New Zealand. Ministry of Health

30 September 2015 - [Gerontology Acceleration Programme \(GAP\) Evaluation Report](#). The Evaluation of the Gerontology Acceleration Programme reports findings from a nursing workforce development programme between Canterbury District Health Board and the aged residential care sector.

30 September 2015 - [Prostate Cancer Management and Referral Guidance](#). Every year 3000 men are found to have prostate cancer and 600 die from the disease. This publication will help primary care practitioners provide men and their family and whānau with consistent, culturally appropriate information on prostate cancer testing and treatment.

29 September 2015 - [National Cervical Screening Programme: changing the primary laboratory test](#). The National Cervical Screening Programme (NCSP) is seeking public views on changing the primary cervical cancer screening test. Currently cervical screening involves analysing cells from the cervix on a slide to identify any changes in the cells of the cervix. With the HPV (human papillomavirus) test showing considerable promise in reducing invasive cervical cancer and lowering the number of deaths from cervical cancer the NCSP is now considering introducing it as the primary testing tool for cervical cancer screening.

29 September 2015 - [Supporting Parents, Healthy Children](#). Supporting parents with mental illness and or addiction and their children: A guideline for mental health and addiction services

28 September 2015 - [Independence in daily activities in advanced age: Findings from LiLACS NZ](#). This report presents findings from the Life and Living in Advanced Age Cohort Study (LiLACS NZ) about the activities that people can perform independently or without assistance, for Māori (aged 80–90 years) and non-Māori (aged 85 years).

25 September 2015 - [Final Evaluation Report – Workforce Innovation Simulation Project: Multidisciplinary operating room simulations \(MORSim\)](#). This publication is an evaluation report of a multidisciplinary operating theatre simulation programme conducted by The University of Auckland.

United States of America. Department of Health & Human Services (HHS)

30 September 2015 - [HHS launches resources system to improve disaster preparedness](#)

30 September 2015 - [HHS enhances preparedness with new products to treat severe burns](#)

29 September 2015 - [HHS announces \\$685 million to support clinicians delivering high quality, patient-centered care](#)

29 September 2015 - [HHS advances development of novel drug to treat influenza](#)

28 September 2015 - [HHS sponsors development of drug for hospitalized influenza patients](#)

Australian Medical Association (AMA)

1 October 2015 - [Medical degree fee blowout put on hold](#). AMA President, Professor Brian Owler, has welcomed the Government's decision to "shelve" its controversial university deregulation legislation for this term of Parliament, but called on the Government to put an immediate end to fears of a blowout in university fees. "Under the Government's deferred proposals, the costs of a medical degree could have risen to well over \$250,000," Professor Owler said. "This would have discouraged students from low socio-economic backgrounds from entering medicine, it would have pushed future graduates towards higher paying specialties, and it would have deterred graduates from working in underserved areas, including rural Australia.

1 October 2015 - [Aged care makes welcome return to Health Portfolio](#). The AMA welcomes the Government's decision to return responsibility for aged care to the Health portfolio. AMA President, Professor Brian Owler, said today that aged care has been missing the public and political focus it deserves in recent times. "It is vital that the health needs of older Australians are considered as a key

component of the broader health policy debate, and it is fitting that aged care is back with the Health Minister,” Professor Owler said. “Caring for older Australians, whether they live in residential aged care or independently in their own homes, is an integral part of medical practice.

27 September 2015 - [AMA Media Release - Government undermines MBS review with attack on medicare and integrity of doctors](#) - AMA President, Professor Brian Owler, said today that the Government has undermined its own Review of the Medicare Benefits Schedule (MBS) by launching a political attack on Medicare and the integrity of doctors. Professor Owler said the AMA had been very supportive of an MBS Review process that was clinician-led, and which had no preconceptions about the use or misuse of medical services, but Health Minister Ley has overnight launched an attack on the medical profession.

British Medical Association

30 September 2015 - [Global inequality deal an 'historic moment'](#) - A global agreement aimed at eliminating health inequalities around the world has been welcome...

29 September 2015 - [Labour sets out stall on beleaguered NHS](#) - Greater integration of health and social care and a reversal of competition within the NHS we...

25 September 2015 - ['Responsible, safe and sustainable' general practice](#) - A new vision for a 'sustainable, modern and flexible' general practice is publish...

ABOUT US

Mark Williams



Mark is a partner in the Litigation and Regulatory team at DLA Piper.

Mark's focus is on public liability and professional indemnity insurance and associated litigation. He has particular experience with medical negligence claims and the complex insurance and indemnity arrangements prevalent in the resources, mining, building and construction industries.

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