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ARTICLES

Does a Doctor Have a Duty to Provide Information and Advice about Complementary and Alternative Medicine? – *Elizabeth Brophy*

It is argued that a doctor has a duty to provide information about reasonably available complementary and alternative medicine treatments where that information would be material to the particular patient or the hypothetical prudent patient. Given the vast array of such treatments available, doctors will want to rely on evidence-based medicine problem-solving skills to ascertain those treatments that are safe and efficacious. While the risk of litigation for failure to provide such information is probably low at this time, given the high rate of patient self-prescribing, it is necessary for a doctor to open a dialogue with a patient about complementary and alternative medicine to address safety concerns. In addition, it is important to facilitate access to the best of conventional and complementary treatments to ensure better health outcomes for the patient.271

Chinese Dragon or Toothless Tiger? Regulating the Professional Competence of Traditional Chinese Medicine Practitioners – *Malcolm Parker*

The escalation in popularity of complementary and alternative medicine (CAM) has begun to stimulate regulatory responses to ensure the safety and efficacy of different modalities. The Therapeutic Goods Authority in Australia oversees a scheme of listing and registration, said to lead the world. Established CAM courses now confer recognised bachelor degrees. Victoria has recently regulated Traditional Chinese Medicine (TCM) practitioners, through the *Chinese Medicine Registration Act 2000* (Vic), modelled on legislation regulating medical practitioners. CAM is being integrated into conventional medical (especially general) practice, and calls for the “mainstreaming” of CAM are increasing. Integrating CAM, however, involves a critical incoherence, well illustrated by the Victorian legislation. Clinical competence can only be properly assessed against standards established through scientific validation. If CAM systems, which purport to offer alternatives to science-based medicine, are regulated through conventional instruments, they may well be relinquishing the very identities which set them apart.285

Obligation to Advise of Options for Treatment – Medical Doctors and Complementary and Alternative Medicine Practitioners – *Michael Weir*

An important aspect of health professional’s duty of care is to advise patients of the available options of treatment so that the patient can choose the form of treatment that suits her or his requirements. As CAM becomes more evidence-based and accepted, medical doctors need to consider the extent to which they should

provide patients with information about those types of treatments. If a CAM treatment option is evidence-based, there is a strong argument that medical doctors should advise of this option for treatment to satisfy their duty. CAM practitioners should also provide details of options for treatment within their own modality but are not obliged to advise of medical options.296

General Practitioners' Perspectives Regarding Competence and Confidentiality in an Adolescent with Suspected Anorexia Nervosa: Legal and Ethical Considerations
– *Terence P Bartholomew and Susan J Paxton*

In Victoria, Australia, the legal position regarding young people's competence to make medical treatment decisions has not been clarified in legislation, and a number of often vague common law decisions must be relied on for guidance. This situation produces a degree of uncertainty about appropriate professional practice, while also potentially impeding young people's rights claims in health care settings. With this in mind, the present research explored general practitioners' competence and confidentiality decisions regarding a 17-year-old female who presented with symptoms of an eating disorder. Questionnaires were sent to a random sample of 500 Victorian general practitioners, of whom 190 responded. After reading a case vignette, general practitioners indicated whether they would find the hypothetical patient competent and if they would maintain her confidentiality. Seventy-three per cent of respondents found the patient competent and most would have maintained confidentiality, at least initially. However, subsequent analysis of the rationales supplied for these decisions revealed a wide diversity in general practitioners' understandings and implementations of extant legal authority. This research highlights the need for general practitioners to be exposed to up-to-date and clinically relevant explanations of contemporary legal positions.308

Tensions in Private Health Insurance Regulation – *Sharon Willcox*

This article provides an analysis of the regulatory framework of Australian private health insurance linked to four major implicit regulatory objectives: promoting access to health insurance for consumers; promoting financial solvency and industry viability of registered health benefits organisations; promoting competition between registered health benefits organisations; and promoting accountability to consumers. Through an analysis of regulatory changes, case law and policy documents on the performance of the health insurance industry, it is argued that existing health insurance regulation exhibits inevitable tensions due to shifting and often conflicting government objectives about the role of private health insurance.325

Regulation of Online Pharmacy: An Australian Perspective – *Paul Bernath*

This article argues that existing Australian regulations do not adequately cover online pharmacies or Internet advertising of medicines and that existing penalties and sanctions are often ineffective, potentially placing public health and safety at risk. Suggestions are made for future regulatory approaches. It is concluded that as well as an effective program of public education, cautious domestic legislative reform is necessary to ensure specific regulation of Australian online pharmacy practice and Internet advertising of medicines. In addition, the global nature of the Internet demands international co-operation and increased regulator and consumer vigilance.339

A Hospital's Non-delegable Duty of Care – *T R O Boston*

Visiting, honorary and staff medical practitioners, to name but a few, provide medical treatment and services to a variety of "patients", including private, public, in-patients and out-patients. The legal implications arising from the often complex fact situations created by the interactions of these participants and the relationship between hospitals and these participants can lead to hospitals both incurring and avoiding liability for injuries sustained by patients from negligent medical treatment. This article discusses the legal principles governing hospitals' liabilities in this context on the more onerous non-delegable duty of care ground.364

BOOK REVIEW

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MAW v Western Sydney Area Health Service [2000] NSWSC 358.
Journals: J Crawford, "Pharmacists' Liability for Drug-induced Injury" (1995) 2 JLM 293.
Books: N Mullany and P Handford, *Tort Liability for Psychiatric Damage* (The Law Book Co Ltd, Sydney, 1993), p 261.
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Crawford, n 1, at 295.
Mullany and Handford, n 2, pp 265-266.

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