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ARTICLES

Polygraph testing for deception in Australia: Effective aid to crime investigation and adjudication? – *Marilyn McMahon*

This article examines the current scope of polygraph testing in Australia, describes different approaches to testing, briefly reviews recent information relating to validity and evaluates State legislation prohibiting the use of polygraph testing for specified purposes in New South Wales. Consequent to the continuing controversy regarding the accuracy of polygraph testing in detecting deception (and, conversely, truth-telling), it is argued that the emerging use of polygraph testing is problematic and common law principles rendering the results of such testing inadmissible in court do not constitute sufficient safeguard against inappropriate and intrusive testing. Future research should identify specific polygraph testing techniques and consider the most socially beneficial way of regulating this emerging area of practice. 24

Perceptions of responsibility for clinical risk management: Evidence from orthopaedics practitioners, practice managers and patients in an Australian capital city – *Sally Andrews and Mary Barrett*

The article describes a study of the perceptions of three groups – patients, orthopaedic surgeons and the surgeons' practice managers – concerning three types of legal risk associated with the duty of care: failure to follow up, failure to warn and failure to diagnose. The study found there is cause for concern about doctors' follow-up and documentation of patient care. Doctors may be unaware of the Australian courts' propensity to emphasise practitioner responsibility rather than patient autonomy. A further important result is the considerable disparity between the surgeons' views and the views of their practice managers about the duty of care. The article draws out implications for improved risk awareness and suggests further research. 48

The law and practice associated with advance directives in Canada and Australia: Similarities, differences and debates – *Margaret Brown*

This article is a summary of research that investigated the Canadian and Australian legislative framework associated with advance directives in health care. The research focused on the context in which older people are

encouraged to use advance directives. These are directions about refusal of medical treatment given in advance of incompetence. Several confusing issues were also identified with the legislation related to advance directives. There appears to be a move towards appointing a substitute decision-maker, but with significant differences across the Australian States and in Canadian Provinces. The “conversation” about future decisions emerged as an important theme, together with an emphasis on the process of “advance care planning” replacing the focus on advance directive forms. 59

Private thoughts of public representatives: Assisted death, voluntary euthanasia and politicians – *Lindy Willmott and Ben White*

Assisted death and voluntary euthanasia have received significant and sustained media attention in recent years. However, despite all of the recent attention that has focused on assisted death and voluntary euthanasia, a discussion of the adequacy of existing laws has not made it onto the political agenda of any of the Australian State or Territory governments. This article explores the role of politicians’ views and, as a case study, considers the opinions expressed by a number of Queensland Members of Parliament. In light of the views of these politicians and those of members of the public, as well as considerations arising from current medical practice, the article argues that there is a need for open political debate on assisted death and voluntary euthanasia. 77

The use of medical examinations for employment purposes – *Robert Guthrie*

This article examines a number of legal issues which arise where medical examinations or tests are used in the employment context, either to test the suitability of a prospective employee in pre-employment situations or to ascertain the fitness of existing employees. This article discusses the legal obligations involved in pre-employment medical testing and, in particular, employee obligations to provide correct information in relation to their health to a prospective employer. It also notes the consequences for employees of providing false information in relation to workers compensation claims and dismissal cases. The article concludes by noting that employers need to take care in seeking medical information, and that it should not simply be done as a mechanical, matter-of-course exercise. 93

Diminished responsibility: The difference it makes – *John Dawson*

Should there be a defence of diminished responsibility after the mandatory life sentence for murder has been abolished? This is the main question posed in this article, on the basis of a review of the central features of the defence and its surrounding forensic context. The views of the defence taken by the Law Reform Commissions of New South Wales and New Zealand are then compared. In conclusion, it is argued that opinions about the continuing validity of the defence of diminished responsibility are bound to be influenced by wider positions taken on the value of rules, as opposed to discretion, in the criminal law. 103

Proof of cancer causation and expert evidence: Bringing science to the law and the law to science – *Randall Kune and Gabriel Kune*

This article discusses the medico-scientific and the legal views of cancer causation and how these two approaches impact on expert evidence.. The article does not seek to identify or to resolve all the controversies or inconsistencies in the area. Rather, it sets up a basic framework for the general presentation and testing of expert medico-scientific evidence in litigation related to cancer causation. Specifically, it seeks to identify the technical questions of law and medical science regarding which medico-scientific disciplines can be relevant to proving cancer causation, and who the relevant expert witnesses to achieve this task would be. Emerging areas of cancer causation are then examined in light of this framework. 112

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