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GUEST EDITORIAL – *Livia Iacovino*

Networking electronic health records: Issues arising from the HealthConnect initiative5

LEGAL ISSUES – *Bernadette McSherry*

Electronic medical records: Perils of outsourcing and the Privacy Act 1988 (Cth) ...8

MEDICAL ISSUES – *David Ranson*

Workplace violence in health care 14

MEDICAL LAW REPORTER – *Rachel Young*

Wrongful life claim (*Harriton (by her tutor) v Stephens; Waller (by his tutor) v James; Waller (by his tutor) v Hoolahan*) 17

ARTICLES

Electronic health records: International, structural and legal perspectives – *Nicolas P Terry*

The EHR is a database record that incorporates a patient's health care details from conception to death and which can be distributed over a number of sites or aggregated at a particular source. This article describes the function and concept of the EHR by relating it to other medical information technologies, other changes in health care delivery, and a holistic health information model. It compares the progress that Europe, Australia and the United States have made towards EHR implementation and concludes by highlighting some of the costs, barriers and consequences associated with the transition to a comprehensive EHR system. 26

Trustworthy shared electronic health records: Recordkeeping requirements and HealthConnect – *Livia Iacovino*

HealthConnect is a proposed national electronic health record system, centred on electronic health event summaries, that capture all health encounters of those patients and health care professionals who "opt in" to the system. This article reports on key findings of an analysis of HealthConnect's data principles, systems and business architecture, from a records continuum perspective, and from recordkeeping requirements of reliability and authenticity. It concludes that HealthConnect lacks critical recordkeeping functionality and that inadequate policy with regard to ownership, consent and privacy impacts on the business and systems architecture, and consequently its ability to deliver trustworthy records. 40

Ethical issues in HealthConnect's shared electronic health record system – *Bernadette McSherry*

Many countries are in the process of implementing systems of shared electronic health records. This article explores some of the ethical concerns raised by Australia's proposed HealthConnect system which aims to create electronic event summaries of health information. Three areas of ethical concern relating to confidentiality, consent and the involvement of the private sector are examined. Unless the HealthConnect

system is firmly grounded in policy based on ethical considerations, patients may not want to “opt in” to it ... 60

HealthConnect and the duty of care: A dilemma for medical practitioners – Danuta Mendelson

This article asks whether medical practitioners’ duty of care to their patients will encompass participation in the HealthConnect shared electronic records initiative. Medico-legal aspects of the HealthConnect scheme relating to the nature of shared electronic health record summaries (SEHRs) are examined. The analysis is based on the premise that an incomplete and hence inaccurate shared electronic health record summary is clinically and legally more perilous than no record at all. 69

HealthConnect and privacy: A policy conundrum – Moira Paterson

A shared electronic health record is intrinsically privacy-invasive because it creates a comprehensive record for information-sharing. The author explains the significance of information privacy and why it is that health information warrants special protection. She also provides an overview of the existing regulatory framework and evaluates proposals for addressing privacy-related issues. Her analysis of suggested consent models suggests that they ultimately involve a trade-off between privacy and the broader benefits promised by HealthConnect and that obtaining the right balance is essential if HealthConnect is to achieve optimal health outcomes. 80

Paths toward reclamation: Therapeutic jurisprudence and the regulation of medical practitioners – Ian Freckelton and Joanna Flynn

Much about what used to be termed “disciplinary” investigations and hearings is being revisited in the modern era. Therapeutic jurisprudence enables informed and sensitive awareness to potentially therapeutic and counter-therapeutic effects of both investigations and hearings conducted by medical regulatory authorities. This article analyses key aspects of authorities’ processes from the perspective of notifiers/complainants and practitioners. Using developments at the Victorian Medical Practitioners Board as a base, it addresses issues of both investigative procedures and decision-making at formal and informal hearings, as well as the ramifications of re-hearings for the integrity of peer review informed regulation. 91

Stalking by law: Damaging victims and rewarding offenders – Michele Pathé, Rachel Mackenzie and Paul E Mullen

Despite the introduction of anti-stalking statutes throughout Australia and much of the Western world, the legal system is failing some victims of stalking. This article examines those areas of the justice system that are particularly susceptible to manipulation by stalkers and the impact of these abuses on stalking victims. It also presents ways in which the problems encountered by stalking victims may be frustrated rather than alleviated by specific aspects of the enforcement of anti-stalking laws and of the functioning of certain courts and tribunals. Approaches that prevent or discourage the perpetuation of harassment and damage to victims of stalking within the legal system are discussed. 103

When silence threatens safety: Lessons from the first Canberra Hospital Neurosurgical Inquiry – Thomas Faunce, Kerry Mure, Catherine Cox and Brigid Maher

Using the First Inquiry into Neurosurgical Services at the Canberra Hospital as a case study, this article argues that the recommendations of the Bristol Royal Infirmary Inquiry – which emphasise reformulation of clinical governance structures, including early reporting of “sentinel events” and compulsory clinical audits – will be ineffective without a reformed institutional ethos that encourages open transparency and respect for those committed to such processes. Such reformulation may need to commence in medical education. 112

Culling bad apples, blowing whistles and the Health Practitioners Competence Assurance Act 2003 (NZ) – Susan Rogers

This article looks at the background to the *Health Practitioners Competence Assurance Act 2003* (NZ) and reasons for resistance to it. It discusses the medical profession’s self-regulation of fitness-to-practise issues and the legal duties of practitioners who have reason to believe a colleague is putting patients at risk. It looks at some of the changes the Act brings, compares the experience of English and American medico-legal reforms, where applicable, and attempts to draw some conclusions on the chances for successful change. 119

BOOK REVIEWS

Surviving Stalking, by M Pathé 134

Legal and Ethical Issues in Human Reproduction, by B Steinbock (ed) 135

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