



Message from the Editor

Welcome to the Winter Edition of Legal Check-Up – our way of keeping in contact with the health practitioners who assist our clients and updating you on the latest health and legal issues.

It's been a busy first half of 2014 for the Adviceline team – we are opening an office in Epping, our Springvale office has expanded and we have had two new lawyers join our Melbourne team.

Although we are growing we are committed to providing a personal service so please contact us if we can help you or your patient in any way.

Bree Knoester, Partner

Note-worthy notes

Learnings from recent cases and best practices for excellent record keeping



In preparation for nearly every personal injury case, the clinical notes of an injured plaintiff are requested by the plaintiff's solicitors.

Once legal proceedings have been issued, they will often be subpoenaed by the solicitors for the defendant as well.

The clarity and thoroughness of clinical notes are often critical in helping injured people establish the chronology of their medical treatment, their initial presentation and their history (or lack) of prior complaints.

For a health practitioner involved in litigation, your clinical notes will form the basis of your evidence – allowing you to demonstrate and justify the decisions you made when treating a patient. Giving evidence is not a memory test – the court does not expect you to know the histories of all your patients at any one time – however, the better your notes, the better your ability to give fulsome evidence.

In the 2010 decision of *Sandra Thompson v Dr Hassbroek*, the NSW Supreme Court described a doctor's note taking as deficient.

Mrs Thompson presented to her general practitioner, Dr Hassbroek with symptoms of cervical radiculopathy but was not referred for radiological investigations at the appropriate time. Mrs Thompson ultimately required decompression surgery and suffered permanent nerve damage.

A critical issue in the case was what was said and recorded at each of the consultations. Dr Hassbroek had no independent recollection of the consultations and had to rely heavily on his clinical notes.

Ultimately, Mrs Thompson was able to establish that given the description of symptoms she gave to Dr Hassbroek – though not recorded by him – Dr Hassbroek should have pursued further investigations of her neck and arm complaints.

Better note taking by Dr Hassbroek would have enabled him to demonstrate his treatment was appropriate.

Our tip – keep notes CLEAR:

C – Chronological

L – Legible

E – Easy to read

A – Accurate

R – Record detailed information

New Certificates of Capacity



With notably little fanfare (no press release; no explanatory material), WorkSafe Victoria has introduced a new Certificate of Capacity for use from 1 July 2014 onwards.

Both the new and 'old' versions of the Certificate of Capacity may be used until 31 December 2014. From 1 January 2015, only the new version will be accepted by WorkSafe.

The new version requires the certifier to provide much greater detail and specificity as to an injured worker's mental and physical functionality and capacity. Section three of the new Certificate sets out eight physical functions and three mental health functions to be evaluated by the certifier. Section three also contains five separate spaces for the certifier to provide additional comments and considerations regarding function and capacity.

WorkSafe seem to be very keen to understand not only the worker's

limitations, but also what capacity they retain. This greater particularisation of capacity will assist insurers and employers in better planning and implementing suitable return to work plans.

Almost certainly, the greater particularisation of capacity is designed to make it harder for the certifier to justify a 'no capacity for employment' assessment. The certifier must also now estimate a timeframe for return to work and set out the treatment plan devised to overcome any return to work barriers.

Whether WorkSafe has considered the possible ramifications of requiring those who treat injured workers to provide what is, in effect, a detailed, monthly report – for free – is unclear.

David Schwartz, Senior Associate



Doctor Q&A: Join us for afternoon tea

We host a monthly afternoon tea and "Q&A with a Doctor" session at our Melbourne office. This is a great opportunity for our team to meet doctors and specialists who work with our WorkCover and TAC clients and to ask the medical questions we have always wanted to ask!

This quarter we really enjoyed Q&As with an orthopaedic surgeon, a psychiatrist, and an occupational physician. This month we are looking forward to meeting a plastic surgeon and better understanding the way scarring is assessed under the AMA Guides and the delicate nature of hand and wrist surgery.

We would love to host more of the allied health practitioners that work with our clients – **if you are interested, please contact Bree on 03 9321 9977**

Workcover trends and tendencies

A recent study conducted by Monash University has examined the practices of general practitioners and other medical specialists when issuing WorkCover certificates of capacity.

The study concluded that workers who suffer from mental health conditions were more likely to be certified unfit for all duties as opposed to being able to return on a limited basis. Workers suffering from a physical injury were more likely to return to work on alternative duties sooner rather than later.

The researchers also examined whether the worker's type of injury had an impact on the length of time they received certificates from the treating health professional. The available data indicates that workers with soft tissue injuries and strains were likely to need certificates for a shorter period of time than people who suffered from psychiatric conditions or fractured bones whilst in the workplace.



New Workcover Act – the Workplace Injury Rehabilitation and Compensation Act 2013

The *Workplace Injury Rehabilitation and Compensation (WIRC) Act 2013* took effect from 1 July 2014. This means that all injuries that occur in the workplace after 1 July 2014 will be governed by the new provisions, although injuries pre-July 2014 will continue to be regulated by the *Accident Compensation Act 1985*. Thankfully, there are no changes to a worker's entitlements under the *WIRC Act*, but the sections containing those entitlements have been renumbered.

Asbestos Victims Face Further Hurdle



“Those who suffer from asbestos related diseases not contracted in the course of employment are required to satisfy the “significant injury” requirements within the meaning of the *Wrongs Act*”.

On 10 June 2014, the Supreme Court delivered a ruling in *Multari v Amaca Pty Ltd and Anor*, a case brought by the dependents of Mr Multari who died of an asbestos-related condition.

The defendants argued that the plaintiffs were not entitled to recover damages for pain and suffering in respect of Mr Multari's injuries because it was not established that he had suffered a “significant injury” within the meaning of the *Wrongs Act*. The Court decided that those who suffer from asbestos related diseases not contracted in the course of employment are required to satisfy the significant injury requirements set out in the *Wrongs Act* when it was previously thought that such claims were excluded.

This ruling presents an additional hurdle for plaintiffs who have suffered asbestos-related diseases and requires both lawyers and doctors to give consideration to the assessment of respiratory conditions under the AMA Guidelines.

Above articles by Genna Angelowitsch, Lawyer (as pictured above) and Bree Knoester, Partner



Adviceline announces new Epping office



Andrea Tsalamandris,
Partner

In addition to our office in the heart of Melbourne's CBD – 555 Bourke Street – we have suburban offices in Springvale and Melton. More and more of our clients are from the north-western parts of Melbourne and we are excited to announce we are opening an office in Epping to better service those clients.

Did you know Wyndham, on Melbourne's western edge, has up to 12,000 new residents each year? Melton has up to 8,000 new residents each year!

Our Epping office will be headed up by Practice Group Leader and Partner, Andrea Tsalamandris (as pictured), with a team of lawyers, including new lawyer and local resident, Deidre Petrakis.

Our Epping office will be able to offer clients legal advice and services relating to TAC, WorkCover, public and occupier's liability and asbestos and dust diseases. We are really looking forward to personally meeting the doctors and health practitioners near our new office and hope to see you at the official opening – date coming soon!

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