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MIAA Annual Forum 2013

'CHEWING THE FAT'

Scott Chapman, Partner – Division Leader, Health Services Division, TressCox Lawyers



The facts



- The BJMC was a practice owned and operated by Idameneo.
- The patient consulted with Dr B at the BJMC who ordered a HIV test.
- The patient's contact details had changed since she last attended the practice.
- The patient did not tell Dr B or any member of the staff at the BJMC that her contact details had changed.
- No one at the BJMC asked the patient to confirm whether the recorded contact details remained correct.

The facts (cont)



- The patient returned to the BJMC but did not see Dr B.
- The pathology lab spoke to Dr J in relation to the patient's test results.
- When the patient returned to BJMC of her own accord, she was seen by Dr G.
- The patient had tested positive for HIV.

The Claim



- The partner of the patient BJMC commenced proceedings against the BJMC and the doctors who saw the patient at the BJMC alleging, inter alia:
 - the doctors' failed to correctly advise the patient that she had contracted the HIV virus;
 - the doctors' failed to provide advice in relation to engaging in unprotected sexual intercourse, having contracted the HIV virus;
 - BJMC's staff failed to maintain current and correct patient records.

The evidence



- It was invariable practice of staff at the BJMC to confirm a patient's name, address and telephone number when a patient attended the BJMC, and if the details provided differed, then the record would be updated. In this case, this did not occur.
- The expectations of the requirements of the staff in this regard were found in the BJMC's Reception Training Manual and in its Receptionist Job Description.
- The patient was required to give a blood sample for pathology testing. The blood collection was performed at and by a nurse employed by the BJMC. The Procedure Manual required the nurse to check the patient's identification details, date of birth, address and telephone number at the time of collection of the blood sample. This did not occur.

The evidence (cont)



- Idameneo had entered into contractual agreements with the doctors whereby the doctors practised at the premises providing medical services to patients, and Idameneo provided administrative services, clerical staff, equipment and facilities. Under the contracts ownership, maintenance and control of the patient records rested with Idameneo.

The decision at first instance



- The Judge agreed with the doctors that the breaches by Idameneo contributed to the patient's partner contracting HIV. Idameneo was ordered to contribute 40% towards the damages paid by the doctors to the plaintiff (plus interest and costs).
- In so deciding, the Judge considered the provisions of the *Public Health Act 1991* regarding the importance of the reporting of communicable diseases and the need to keep accurate patient records. Further, her Honour found that Idameneo, having put policies in place to ensure the maintenance of up-to-date patient records, was aware of the risk of harm occurring if records were not accurate.

The decision at first instance (cont)



- Her Honour also took into account that under the terms of the contracts entered into with the doctors Idameneo owned and had full control over the patient records.



"The doctor's lawyer will see you now."

The Appeal



- The Court of Appeal found that:
- *... In a more traditional medical practice the doctor, as well as providing medical services, would have control over his or her medical records and it would be the doctor's responsibility to keep those records up to date. At the BJMC, those functions were divided between the doctor and the appellant [Idamaneo]. It was the appellant which assumed responsibility for maintaining patient records. Nevertheless, what was being conducted was still a medical practice and I see no difficulty in imposing a duty to maintain up to date records on the entity responsible in the practice for patient records.*

The Court of Appeal (cont)



- The provisions in the contracts in the Idamaneo case were important. Under the contracts, it was Idamaneo who owned and had full control over the patient records. Further, the policies and practices in place at the BJMC confirmed the importance of ensuring patients' medical records were kept up-to-date by staff employed to work at the BJMC.

Lessons learned

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- Medical practitioners and medical practices should review their contracts and their policies and practices with respect to medical record-keeping.
- While medical practitioners have a legal obligation to make, maintain and keep medical records, it may well be that medical practices by virtue of contractual arrangements and policies in place, also have a responsibility to medical practitioners and patients to make, maintain and keep medical records.
- It is important that when policies are in place at a medical practice that those policies are complied with, or if they cannot be complied with, then the policies should be amended to ensure that practice and policy are one and the same.

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