

Year in Review: 2023 Medico-Legal Wrap-Up

Reading time:

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What a year it has been for MIPS and its members! The healthcare industry witnessed numerous changes in 2023, including revisions to telehealth regulations, new guidelines for advertising and performing cosmetic surgery and non-surgical procedures, and stricter guidelines for patient safety. In our final webinar for 2023, we explore some of the most notable cases and respond to issues that our members have told us are important to them, including employment contracts, dental scope of practice, and discuss some recent trends from our medico-legal advisory service.

Common employment contract issues

Negotiating a Written Contract

- Read the "fine print".
- Contracts are usually not set in stone - always feel free to negotiate the terms.
- Seek legal advice if you have any concerns.

Insurance/Indemnity

- Is the employee indemnified by the employer or is your own separate professional (medical) indemnity insurance required? AHPRA requires you to have an indemnity arrangement for all aspects of your practice.
- Is the employee being asked to accept wider liability for matters outside of his/her control – eg public liability or workers' compensation?
- Check coverage with your Medical Defence Organisation.

Am I an Employee or Contractor?

- Rule of thumb: Are you (a) performing services as a business owner or (b) working for another person's business as a representative of that business.
- Is the contract an employment contract or a facilities agreement?
- What are the consequences? leave entitlements, superannuation, unfair dismissal, insurance, tax, GST, other.

Termination/resignation

- Minimum notice periods for termination by employer are in the Act but contract can provide for longer notice periods.
- Generally, notice of resignation and notice of termination periods reflect each other.

Scope of practice

Scope of practice governs basically everything you do in your day-to-day job.

- You should not practice outside your scope of practice.
 - You must only perform dental treatments that you have been educated and trained in, and that you are competent in.
- MIPS cannot assess your scope of practice for you. The Dental Board highlights that You are responsible for knowing your own scope of practice, so you must learn to assess your expertise. Get advice from professional bodies.
- Confidently educate your colleagues and patients on the limits of your scope of practice.
- Section 3 guides you on the elements to consider. It also looks at the benefits of doing continuing professional development (CPD) to:
 - maintain and improve your skills and experience.
 - broaden your scope of practice within your division.
- In the event of a regulator investigation, whilst MIPS will assist you, it is up to you prove to prove you have the appropriate qualifications, training and experience for that practice.
- The regulator will then assess accordingly. If the regulator assesses negatively, you may face punitive actions – registration conditions or even suspended registration.

Tales from the bar

[Medical Board of Australia v Carr \(Review and Regulation\) \[2023\] VCAT 945](#)

A practitioner has been the subject of disciplinary proceedings due to their conduct in dealing with the VAD legislation. In this case, the doctor inadvertently failed to have the patient sign a declaration properly. There was no suggestion that the patient was not eligible to participate in VAD. The VAD Board identified the irregularity in the paperwork and referred the doctor to the Medical Board. An allegation of professional misconduct was made, which the doctor accepted. He was reprimanded and fined \$12,000. In the decision, the Tribunal stressed that compliance with all requirements of the VAD Act is vital not only for the protection of patients but also to ensure public confidence in the VAD process is not eroded.

[Medical Board of Australia v RRB \(Review and Regulation\) \[2023\] VCAT 666 \(16 June 2023\)](#)

This VCAT decision involved three allegations of professional misconduct concerning a doctor's treatment of, and prescribing of scheduled drugs (including drugs of dependence) to his wife. There was a further allegation relating to self-administration of one of the drugs prescribed to his wife. The conduct came to light because of a notification made by another health practitioner, following the patient being admitted to hospital for an alleged overdose.

The doctor made early admissions, co-operated with investigations, retired from practicing, and surrendered his registration.

This case should serve as a salutary reminder to the medical profession as to the inherent dangers of treating family members, absent emergency, more so (as in this case) that treatment includes the prescribing of drugs of dependence.

Failure to cooperate with the regulator

A practitioner whose conduct is the subject of an investigation by the Board has a duty to assist the Board in its enquiries. That does not mean that the practitioner must disregard his own interests. But it does mean that there is an obligation upon the practitioner to respond to reasonable requests for information, particularly when considering the fact that often the practitioner will have better knowledge and understanding of the matter, the subject of the complaint, than will the complainant.

Doctors' responsibilities and rights relating to investigation or any legitimate inquiry are also set out in clause 10:11 of Good Medical Practice: Code of Conduct for Doctors. A failure to cooperate with the regulator could amount to professional misconduct.

Additional MIPS resources

CPD accredited webinars

[Self-esteem and Body Image - A growing social and community issue](#)

[Regulatory Change – Telehealth](#)

[Risk Management for Oral Health Therapist](#)

Articles

[Updates in Telehealth Guidelines: What You Need to Know](#)

[Major cosmetic reforms effective 1 July 2023](#)

[Employment contract basics for healthcare practitioners](#)

[Employment contracts – Making them work for you](#)

[Top tips for preventing escalation of issues and what to do when suspended or dismissed](#)

Other resources

[Verbal assignment of benefit arrangements for telehealth services](#)

[Assignment of benefit and signature requirements for MBS telehealth services](#)

[New Cosmetic Surgery and Procedure Guidelines to take effect from 1 July 2023](#)
