HIGH COURT OF AUSTRALIA

Public Information Officer

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CHEE KAN KENNETH WONG v COMMONWEALTH OF AUSTRALIA AND RIFAAT GEORGE DIMIAN

ASHRAF THABIT SELIM v VINAYAK (VINOO) LELE, PATRICK TAN and DAVID RIVETT constituting the Professional Services Review Committee No. 309; THE DETERMINING AUTHORITY established under section 106Q of the *Health Insurance Act* 1973 (Cth); HEALTH INSURANCE COMMISSION; AND ALAN JOHN HOLMES in his capacity as Director, Professional Services Review

The Medicare system does not amount to civil conscription of doctors in contravention of the Constitution, the High Court of Australia held today.

Dr Wong and Dr Selim have each been found by a Professional Services Review (PSR) Committee, set up under the Commonwealth *Health Insurance Act*, to have engaged in conduct amounting to "inappropriate practice" due to seeing very high numbers of patients in a given time. In April 2006, Dr Wong commenced an action in the High Court, seeking declarations that sections 10, 20 and 20A and Part VAA of the Act were invalid because they amounted to civil conscription, within the meaning of section 51(xxiiiA) of the Constitution. Section 51(xxiiiA), added to the Constitution after a referendum in 1946, gives Parliament the power to make laws with respect to "provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances". Sections 10, 20 and 20A deal respectively with entitlement to a Medicare benefit, payment to persons incurring medical expenses, and assignment of a Medicare benefit to the relevant medical practitioner. Part VAA of the Act sets up the PSR Scheme and contains the provisions relating to inappropriate practice. The doctors said all their professional activities were controlled by the Commonwealth and that Part VAA dealt so extensively with doctors' conduct as to cover everything a doctor might do.

A Justice of the High Court remitted Dr Wong's action to the Federal Court of Australia in October 2006. In that Court, Dr Wong's action was heard together with an appeal by Dr Selim from a decision of Justice Margaret Stone denying Dr Selim's application for judicial review. The Full Court's decision was adverse to both doctors. It held that the impugned sections did not compel a practitioner to render any professional service to any person. Rather, they compelled doctors to conduct their practices with the care and skill that would be acceptable to the general body of medical practitioners. Dr Wong and Dr Selim both appealed to the High Court.

The High Court, by a 6-1 majority, dismissed both appeals. It held that sections 10, 20 and 20A of the Act do not amount to a form of civil conscription, because doctors do not compulsorily provide service for the Commonwealth, or for other bodies on the Commonwealth's behalf. The Act does not force doctors to treat or not treat particular patients. Doctors are free to choose where and when they practise. The PSR scheme requires doctors to conform to certain norms, which are calculated to ensure that doctors perform professionally. Aspects of the Medicare scheme, such as denial of payment where there is a failure to record details such as item numbers, are conditions of participation in the scheme but these aspects do not amount to a practical compulsion to perform a professional service.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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