



MEDIA RELEASE

Federal Court judgment on PSR corporate referral

The Federal Court has set aside the decision of the Director of Professional Services Review (PSR) to refer National Home Doctor Service Pty Ltd (NHDS) to a PSR Committee for investigation, but has indicated that it remains open for the Director to do so again.

A number of medical practitioners had previously been referred to PSR and 14 practitioners had acknowledged that they had engaged in inappropriate practice in connection with rendering urgent after-hours MBS items while associated with NHDS. The nature of the conduct identified as raising a concern about inappropriate practice included clinical decision-making in prescribing antibiotics and schedule 4 and 8 medications, poor clinical input, inadequate record-keeping, and a concern that a large proportion of the services rendered involved conditions that either did not require treatment or could have reasonably waited until the next in-hours period.

The Court said that the Director was entitled to have regard to those practitioners' conduct when referring NHDS to a PSR Committee to investigate whether NHDS engaged in inappropriate practice through the provision of urgent after-hours services by a further 56 practitioners.

The Court said that it was not unreasonable or irrational for the Director to have made that referral. However, the Court said that, before doing so, the Director should have provided NHDS with more information specific to the practitioners' conduct and their relationship with NHDS that caused the Director concern so that NHDS would have had an opportunity to make submissions to dissuade the Director from referring the services of the 56 practitioners to a PSR Committee.

The Court upheld the PSR's position that the Director did not need to make a positive finding concerning the legal relationship between NHDS and the practitioners, but merely have a concern that such a relationship may have existed, that the practitioners may have engaged in inappropriate practice in providing services, and that NHDS may have knowingly, recklessly or negligently caused or permitted a practitioner to engage in inappropriate practice.

The Director, Professor Julie Quinlivan, said that she intends to resume her review before providing further information to NHDS for their comment.

The judgment can be accessed at:

www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0386

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