IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY No. B63 of 2019

BETWEEN:

STATE OF QUEENSLAND
Appellant

10 and

THE ESTATE OF THE LATE JENNIFER LEANNE MASSON
Respondent

RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

These submissions are in a form suitable for publication on the internet.

1 Upon arrival of the QAS, Ms Masson was so deprived of oxygen that she was 'near the point of dying'; she was blue in the face and unresponsive with an almost non-existent respiratory rate of 2 retracted breaths per minute: CAB p 9-10 [10], p 22 [64].

2 Mr Peters' decision-making process halted once he measured Ms Masson's heart rate. He administered salbutamol for 21 minutes until she went into cardiac arrest. Only then did he administer adrenaline, which saved her life: CAB p 9 [14], p 11 [21].

3 Mr Peters based his actions on the notion that adrenaline could not be used on a patient with a fast heartbeat: see CAB pp 42-43 [145]. That notion was not supported by any expert who gave evidence at trial.

4 Following a comprehensive review of the whole of the evidence, the Court of Appeal correctly recognised adrenaline's superiority made it the only reasonable response to an asthmatic patient who was as close to dying as Ms Masson was: CAB p 100 [167]-[168].

5 The Court of Appeal conducted a proper *Shirt* inquiry which included a consideration of the significant risk of salbutamol being an inferior drug for bronchodilation (confirmed by Ms Masson's unresponsiveness and the undisputed causation finding). By reference to the common law standard of reasonableness, it found Mr Peters had breached his duty of care.

Mr Peters failed to consider adrenaline

6 With the words *"[c]onsider adrenaline"*, the CPM required ambulance officers to balance the potential risks and benefits of adrenaline in response to a case of "imminent arrest", which in a choice between two drugs also requires the balancing of salbutamol's risks and benefits: CAB pp 38-39 [126]-[127], p 70-71 [24]; Response [36]-[37].

7 The Court of Appeal impeccably discharged its function in conducting a review of the trial (*Fox v Percy* (2003) 214 CLR 118, 125-129 [22]-[30]; *Warren v Coombes* (1979) 142 CLR 531, 551), concluding that Mr Peters had failed to consider either drug's potential risks due to his mistaken belief that he was not permitted to administer adrenaline until Ms Masson became bradycardic: CAB pp 73-80 [40]-[66] (esp. [65]), pp 97-98 [151]-[156], p 98 [159]; Response [38]-[52].

8 The trial judge's misguided finding that salbutamol's negative risks were irrelevant to the breach inquiry (CAB p 23 [69]) led to his Honour's determinative error in reasoning that Mr Peters' decision-making process could reasonably halt once he measured Ms Masson's heart rate and blood pressure (see CAB p 41 [140]).

9 In correcting this error, the Court of Appeal did not disturb his Honour's acceptance of Mr Peters' truthfulness as a witness (See *State Rail Authority (NSW) v Earthline Constructions Pty Ltd (In liq)* (1999) 73 ALJR 306, 321 [63]-[64], 332-3 [94]-[95], 340 [148]; cf. *Abalos v Australian Postal Commission* (1990) 171 CLR 167, 179), but rather recognised that Mr Peters' immediate rejection of adrenaline on the basis of Ms Masson's high heart rate and blood pressure did not amount to a consideration of adrenaline as required by the CPM and by the common law standard of reasonableness: CAB p 80 [61]-[66], p 97 [151]; Response [53]-[58].

10 Mr Peters' decision to administer twice the maximum dosage of salbutamol (an action uncontaminated by "legal forum and review": see CAB pp 42-43 [145]-[146]), despite salbutamol's risks of tachycardia and tachyarrhythmias (see CAB p 72 [29], p 97 [152]), further demonstrated his mistaken belief: CAB p 98 [156], [159].

The use of adrenaline was the only reasonable response

11 There was no defect in the Court of Appeal's approach in finding an ambulance officer would have lacked a reasonable basis to administer salbutamol to Ms Masson in her critical condition: CAB p 100 [167].

12 Adrenaline's superiority over salbutamol in achieving a fast and effective dilation of the bronchial passages was understood and endorsed by the medical profession in 2002: CAB p 20 [55]-[56], pp 98-99 [160].

13 Clearly reflected in the CPM was the relevant endorsement of this medical fact; the opinion of the QAS that adrenaline is more effective than salbutamol in cases of "imminent arrest": CAB p 33 [106], p 32 [100], pp 72-73 [34]-[36], p 98 [153]-[155], p 99 [162].

14 The reasonable approach to considering adrenaline would be to follow the opinion of the QAS that salbutamol carries the risk of being an inferior drug for asthmatic patients with extreme oxygen deprivation and, with nothing in the CPM to suggest adrenaline's superiority diminished due to a fast heartbeat (CAB pp 79-80 [60], p 98 [155]), to administer adrenaline to Ms Masson in her near-death condition: CAB p 99 [162], p 100 [167]; Response [59]-[62].

15 An alternative approach to considering adrenaline, proposed by the Appellant, would be for an ambulance officer to deliberately depart from the opinion of the QAS and to administer salbutamol, relying on an external body of specialist physician opinion which he or she had inexpertly interpreted as indicating against the use of adrenaline: see Reply [21]-[22]. The reasonableness of this second hypothetical approach was dismissed in *obiter* by the Court of

Appeal with sound legal and policy reasons in support of its position: CAB pp 96-97 [146]-[149], p 99 [161]-[163]; see also Response [83]-[91].

16 Mr Peters took neither of these two approaches: CAB p 80 [66], p 97 [151]-[152], p 98 [159]; Response [3], [62], [77]-[79]. His failure to consider adrenaline in any way must be compared with the conduct of a reasonable ambulance officer in his position (see CAB p 100 [167]); the subjective causation question raised by the Appellant in paragraph 4A of its Amended Notice of Appeal is irrelevant: see Response [27]-[28].

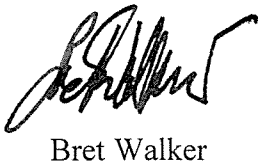
17 The pharmacological differences between adrenaline and salbutamol, underpinning the trial judge's undisputed causation finding (CAB p 51 [182], p 100 [168]) and clearly outlined in the CPM (CAB pp 70-73 [24]-[39]), demonstrate why any balancing of the two drugs could have had only one reasonable result in Ms Masson's case.

18 This is logically compatible with the CPM having a non-mandatory effect (CAB p 39 [129], p 70 [22]-[23]); the decision-making freedom it affords ambulance officers can sometimes be exercised unreasonably, as it was in the present case: see CAB p 100 [167]; Response [18]-[26]; *contra* Amended Notice of Appeal paragraph 4(c).

No responsible medical body preferred salbutamol in 2002

19 The incongruent suggestion that salbutamol may have been perceived by some in 2002 as an equivalent to adrenaline for asthmatics in Ms Masson's condition was soundly rejected by the Court of Appeal (CAB pp 98-99 [160]; Response [71]-[75]).

Dated: 11 June 2020



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