



**CORONERS COURT  
NEW SOUTH WALES**

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| <b>Inquest:</b>           | Inquest into the death of Phillip Buckley   |
| <b>Hearing dates:</b>     | 14-16 July 2015   |
| <b>Date of findings:</b>  | 30 July 2015  |
| <b>Place of findings:</b> | NSW Coroners Court, Glebe   |
| <b>Findings of:</b>       | Magistrate C. Forbes, Deputy State Coroner  |
| <b>Catchwords:</b>        | CORONIAL LAW-Manner of death-prescription drug overdose-prescribing practices-recommendation-referral to HCCC   |
| <b>File number:</b>       | 2012/288092   |
| <b>Representation:</b>    | Ms S Beckett, Counsel Assisting instructed by Ms L Spencer, Crown Solicitors Office<br><br>Mr M Lynch instructed by Ms K Bowers, Avant Law representing Dr Chamberlain                                |
| <b>Findings:</b>          | I find that Phillip Buckley died on 16 September 2012 at 11 Florian Grove, Oakhurst, NSW. I am satisfied the cause of his death was combined drug toxicity. The manner of his death was misadventure. |
| <b>Recommendation:</b>    | <b><i>To the Health Care Complaints Commission</i></b><br><br>1. I recommend that Dr Chamberlain's professional standards be reviewed.  |

## REASONS FOR DECISION

### Introduction

1. This is an Inquest into the sad death of Phillip Buckley. On 16 September 2012 Mr Buckley died as a result of combined drug toxicity.
2. The role of a Coroner as set out in section 81 of the *Coroner's Act 2009* ("the Act") is to make findings as to:
  - (a) the identity of the deceased;
  - (b) the date and place of the person's death;
  - (c) the physical or medical cause of death; and
  - (d) the manner of death, in other words, the circumstances surrounding the death.
3. Section 82 of the Act also permits a Coroner to make recommendations that are considered necessary or desirable in relation to any matter connected with a death that relates to issues of public health and safety.
4. In this Inquest the issues have been the circumstances surrounding Mr Buckley's death and his care and treatment prior to his death.

### Mr Buckley

5. At the time of his death Mr Buckley was 39 years of age. He was married to Michelle Hopper and they lived at 11 Florian Grove, Oakhurst with her three children from her first husband, named Jacob, Ben and Tasmin Hopper.

6. He was a beloved son of Denise and Donald Buckley, and he had four siblings, Shane, Paul, Sheree and Darryl. He also had a half sibling, Donna Truscott.
  
7. He had four children, two to Sharon Challis, named TerriLee and Melissa Buckley, and two to Raelene Hutton, named Joshua and Samantha Hutton.
  
8. The respect and love his children and family held for him was reflected by their daily attendance at this Inquest.
  
9. Mr Buckley was a person who was described by various health professionals as “mildly intellectually handicapped”. His mother confirmed he had experienced learning difficulties as he was growing up, particularly in high school and his literacy level was low.
  
10. Mr Buckley disclosed to his parents at the age of 18 years that he had been the victim of abuse by a neighbour for many years. His adolescent and young adult life was marred by involvement in crime and the use of drugs, most notably amphetamine and cannabis. For most of his adult life he had domestic relationships that were unstable or of short duration. He had periods in custody for offences including drug related matters and he spent time in rehabilitation programs and was part of the drug court program from 2002 to 2004.
  
11. For twelve years prior to his death his GP, Dr Chamberlain, had been prescribing him with Seroquel which is used in the treatment of schizophrenia or bipolar disorder. The appropriateness of this was questioned by the expert witness Dr Hester Wilson, who was not satisfied, on the available records, that he had ever been properly assessed. Discharge records from Nepean Hospital, referred to his condition as an “adjustment

disorder; anti-social personality disorder” with “substance abuse, mild intellectual delay, volatile and aggressive”<sup>1</sup>.

12. Mr W J Taylor, psychologist, reported that Mr Buckley had a “high predisposition to engage in substance abuse and develop dependence on alcohol and/or illegal drugs; he tended to be lacking in insight and prone to engaging in short-sighted and risk-taking behaviour; he had a reduced tolerance for delay and frustration; he had mild anger pathology and antisocial personality problems which included his conduct problems, criminal history and alcohol and drug abuse”<sup>2</sup>.
13. Mr Buckley’s mental condition was described by various family members as variable. Sometimes he was happy and joking, and other times he was depressed and would isolate himself and confine himself to his room. Denise Buckley his mother said that he was prone to aggressive outbursts and could be impulsive.
14. In 2010 Mr Buckley met and formed a relationship with Michelle Hopper. Michelle Hopper had been previously married to Brad Hopper with whom she had three children. Brad Hopper had passed away in similar circumstances to Mr Buckley in August 2001 from an overdose of methadone and alcohol.
15. Mr Buckley was nervous and happy on the day of his marriage to Michelle in 2011. His son Joshua gave evidence that he felt his dad had started to accomplish things in his life at this time.
16. During this period he had regular contact with his children. He met Terrilee regularly for lunch and on every second week-end and Samantha and Joshua came over to stay also every second weekend. In relation to his interactions with his children he was happy.

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<sup>1</sup> Ex 1, Vol 3, p 945

<sup>2</sup> Ex 1, Vol 3, p 1015

17. His relationship with Michelle was however, marred with two incidents of violence of note. In October 2010 an incident occurred at their home where Mr Buckley sustained a knife wound to his abdomen. The police records indicate that Michelle said that Mr Buckley wanted her to have a couple of drinks with him. Michelle refused as she had to work the next morning. Mr Buckley felt rejected and a verbal argument broke out. Michelle requested Mr Buckley leave the location and he took a knife and stabbed himself in the stomach twice<sup>3</sup>.
18. Police and medical records consistently record that Mr Buckley stated that he had stabbed himself. This was what he told his mother and one of his children. His half-sister, Donna Truscott, thought however that he might have told her that Michelle had stabbed him, and TerriLee said that he had told her he had not done it.
19. Whatever the truth of the situation was, it resulted in a life threatening injury, culminating in the development of a debilitating and painful abdominal hernia that grew from the time of the injury until his death.
20. In November of 2011 a further incident of violence occurred where police attended the Oakhurst address in respect of an allegation of assault. He threw a remote control at Michelle and she received an injury to her eye. Mr Buckley was reported to be drinking at the time. An AVO was taken out, and Mr Buckley moved in with his mother. He spent some time getting his drinking under control before Michelle allowed him to move back into the family home in January 2012.

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<sup>3</sup> Ex 1, Vol 2, p 368

## Health events in 2012

21. In 2011, Mr Buckley's hernia was significant. The evidence discloses that during 2012, Mr Buckley's physical condition appeared to deteriorate, and with it his mental condition.
22. His hernia was continuing to grow and affecting his ability to move freely. He reported being in considerable pain. The family reported his complaints of pain, and the medical evidence, particularly his surgeon, Dr Shakeshaft, noted his complaints.<sup>4</sup>
23. Contemporaneous with his complaints about the pain were his expressions of suicidal intent. Exhibit 6 is a schedule collated from the medical evidence of the various occasions on which Mr Buckley expressed intent to suicide many of which made reference to his inability to cope with the pain he was experiencing, or related to the hernia in some way.
24. Although Mr Buckley spared his brother Darryl and his own children from these expressions of suicidal intent, both his wife Michelle and his mother Denise were aware of it. Indeed, Denise and Michelle sought help for controlling his depression on at least two occasions in 2012 from St Mary's Mental Health Team. On 28 May 2012 he was admitted into the Pialla Unit where he stayed until his discharge on 22 June 2012. During that time, the records indicate that Denise and Michelle visited him regularly. The records indicate that "wife and mother very concerned and believed he needs admission main stressor is ongoing pain and discomfort associated with umbilical hernia...does not want to live like this "<sup>5</sup>. The notes further recorded "poor sleep consistently in own room not willing to go out; feelings of worthlessness and helplessness I feel like a cockroach. I am useless as a husband. My kids cannot see me like this...teary and crying...Michelle reported to the medical staff that she had found 80 tablets of Oxycontin under the patient's bed".

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<sup>4</sup>Ex 1, Vol 1, p 82

<sup>5</sup> Ex 1, Vol 3, p 854

25. After Mr Buckley's death, in her interview with police, Michelle referred to this incident. She said she found the pills on his side of the bed and asked him "What are these for" to which he said "Oh nothing". She said, "well if nothing why have you got that many there" and he said "Oh you never know". She said "Don't be bloody stupid" and he said "I wouldn't do anything I'm just feeling depressed, I'm tired of the pain."<sup>6</sup>
26. During his admission in hospital Mr Buckley saw his specialist Dr Shakeshaft and a second surgeon Dr Cregan. Denise and Michelle accompanied him. The agreed position was that the surgery to remove, or at least reduce the hernia, was possible but carried a risk of death. There was no guarantee of relief from pain. A tentative date for surgery was booked for November 2012.
27. In late September 2011 Michelle and Mr Buckley made arrangements to obtain life insurance cover for them both. The recordings of conversations with Michelle and one life insurer form part of Exhibit 5. These recordings indicate that insurance for Mr Buckley was proving difficult to obtain given his health conditions. However, Insurance Line agreed to provide funeral and accident cover for them both. A careful examination of the calls to Insurance Line indicates that the primary purpose of the calls was to obtain cover for the hernia condition and the approaching surgery.
28. Michelle was clearly notified that the insurance covering Mr Buckley did not cover suicide or intentional self-injury or death occasioned by drug or alcohol abuse. She was also aware that in the event of death, that all medical records would be obtained.
29. The insurance cover had a waiting period of 12 months and Mr Buckley was only covered for accident cover and not for death by natural causes or illness. Mr Buckley died just over a week short of the expiration of the 12 month waiting period.

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<sup>6</sup> Ex 1, Vol 1, p 82

30. For Mr Buckley's life insurance to go to Michelle, he would have to write a will nominating her as the beneficiary. At the time of his death, Mr Buckley had not made a will, although he had a plan to do so.

31. If there was any suggestion that Michelle had let her husband die in order to make a claim on his insurance it is not supported by the evidence.

### **Circumstances surrounding his death**

32. On 15 September 2012 the household at Oakhurst celebrated Jacob Hopper's 19<sup>th</sup> birthday. The family organized a barbeque for him and 13-20 people attended including all of Mr Buckley's children except for Melissa who was in Queensland at the time. Mr Buckley commenced drinking during the course of the day and into the evening. He was drinking beer, Jack Daniels and neat Jim Beam.

33. No family member, familiar with the effects of Oxycontin upon Mr Buckley reported seeing him affected in any way that made them think that he had this medication during the evening.

34. At around midnight when all the guests had left Samantha and Joshua Hutton went to bed in the lounge room. Jacob and Ben went to bed in their room. Tasmin had already taken herself off to bed earlier in the night.

35. By all reports an argument commenced between Mr Buckley and Michelle shortly after midnight. Joshua, who was sleeping on the floor in the lounge room, could hear some of the argument before he tuned off by putting on head phones. He said the argument took place between the laundry, their bedroom and the dining room. He described in his recorded interview Michelle walking backwards and forwards between the kitchen and outside the bedroom door.



36. Samantha, lying on the lounge in the lounge-room with her head towards the doorway between the lounge and the dining area, said that the argument started in the kitchen about the issue of ice-cream and Michelle saying Mr Buckley should not have any as it would affect his stomach.
37. Samantha said she heard the argument progress to matters concerning their past and to what sounded like a physical altercation during which she heard Michelle say “let go of me”. She heard the two of them move to the bathroom or toilet area. Shortly after that the mood appeared to change between them and she heard her dad say “sorry, I love you”, before she fell asleep. Jacob Hopper estimated that it quietened down around 12:45 am.
38. This version of events is not significantly different to that reported by Michelle Hopper in the ERISP interview.

### **Events the next day**

39. The next day Joshua Hutton estimated that he was the first one up at about 6 am. He was joined “2 mins later” by Michelle. She had a shower and cleaned the house and mopped the floor. At around 10 or 10:30am she sent Joshua to check on Mr Buckley. Joshua said he went to the bedroom, saw the back of his father lying in bed facing the window away from him, and assumed he was sleeping. The room was dark and he did not turn on the light.
40. He told Michelle that his father was sleeping. Shortly after Michelle indicated that she had a “bad feeling” and went herself to check on Mr Buckley. Thereafter she raised the alarm, saying “you idiot he’s dead”.
41. While suspicions may be raised as to whether or not Michelle knew, before sending Joshua in to check on his father, that Mr Buckley was dead I could not be satisfied on

balance, without any other evidence in support of that hypothesis that it was the case. The forensic evidence is consistent with him passing away after she got up at 6am.

42. It was only after Mr Buckley's mother, Denise had driven to the Oakhurst home that the ambulance was notified of Mr Buckley's death. Michelle had elected not to call an ambulance right away telling Denise that she had been through that with Brad, and that she wanted to allow people to come and say good bye to him before he was taken away.

43. Whilst it appears that the references to Brad Hopper and the refusal to call an ambulance were distressing to the Buckley family, and made them question whether there was some more sinister planning behind the events, another hypothesis is available. That is, that Mr Buckley's death brought back in vivid detail to Michelle, the events of her first husband's death and she wanted Mr Buckley's family to have an opportunity to say their goodbyes.

44. Police attended the scene at around 12:30 pm on 16 September 2012. Photos were taken and a search of the house was undertaken. The lividity, or pooling of the blood on Mr Buckley's body was consistent with the position in which Philip's body was said to have been found. Medications were located by Michelle, as sighted by Constable Beer in the bedside table and above the fridge in the kitchen. Significantly, a pack of Oxycontin, with only 6 out of the 28 tablets remaining was located and provided to police.

### **The cause and manner of death**

45. Dr Szentmariay conducted an autopsy on Mr Buckley on 18 September 2012. He found Mr Buckley to be 127 kilos, to have cirrhosis of the liver, a major hernia, and hepatitis C. He found 15-20 well preserved tablets in his stomach, a few of which (estimated as 3 to 5) he said could still be seen to have an OC marking on. The remainder appeared to be the same tablets. He could not say whether they had all been taken at the exact

same time but they all looked alike albeit in different stages of decomposition in the stomach.

46. Toxicology results indicated the alcohol reading was 0.085 g/100 mL; Diazepam at 0.06 mg/L; Oxycodone at 1.6 mg/L and venlafaxine at 1.2 mg/L (B 23). Dr Szentmariay determined that Mr Buckley died of combined drug toxicity. Dr Szentmariay noted the Oxycontin was not of itself in the lethal range, but in combination with the other drugs and alcohol, this drug was known from various studies from around the world to combine with other drugs and/or alcohol to result in death. Alcohol, Oxycontin, and Valium all had a suppressive effect on respiration, such that breathing becomes shallow and death is possible in a very quiet unnoticeable way. Other factors, like his liver function, or his chest infection at the time, may also have played a role in the death, but his evidence was that his view was that Oxycontin was the substantial cause of death.

47. Whether the taking of the 15-20 Oxycontin was a deliberate act of suicide by Mr Buckley is difficult to say. Certainly he had been drinking heavily and may not have necessarily formed an intention to kill himself when he took the pills. He made no verbal or written indication that he had formed that intention. His children gave evidence that he had taken more than the prescribed amount of his medication on prior occasions. In all of the circumstances I am of the view that in the absence of compelling evidence that he intended to take his own life it is appropriate that I make a finding that the manner of his death was misadventure.

### **Dr Chamberlain's care and treatment of Phillip Buckley**

48. For twelve years before his death Mr Buckley was treated by his GP, Dr Chamberlain at a general practice based in St Mary's. Dr Chamberlain stated that he was treating Mr Buckley for a variety of conditions including drug dependence, severe depression and massive abdominal hernia as a result of an attempted suicide. He said that he suffered severe chronic pain as a result of the abdominal hernia.

49. Dr Chamberlain prescribed Oxycontin, at doses of 40 mg and 80 mg on a daily basis from 28 October 2008. Whilst he specified this dose on each prescription, his rate of prescription allowed for two times this dose, on occasion more than this. Mr Buckley attended Dr Chamberlain for new prescriptions on a fortnightly basis, if not more regularly. His rate of prescription for Valium allowed for about 4 times the dose than his prescription suggested. Dr Wilson, the expert witness in these proceedings, indicated in her evidence there was no identifiable reason that justified the prescription of these two medications for Mr Buckley's condition at these rates, and for this extended period of time.

50. Dr Wilson noted that the paucity of Dr Chamberlain's notes made assessment as to his condition difficult. Further, despite evidence that Mr Buckley's hospital records and correspondence from surgeons were sent to Dr Chamberlain none of these records appeared on the file that Dr Chamberlain produced to this Court. One of these records at least was of particular importance, the records following the discharge of Mr Buckley from the Pialla Unit on 22 June 2012. The discharge hospital notes indicated that the Discharge summary was faxed to Dr Chamberlain on 22 June 2012. This document indicated that Mr Buckley was released from Pialla with a reduced dose of, inter alia, Oxycodone of 20 mg per day, and Diazepam 5 mg. The Discharge Summary advised that "patient initially was noted to be drowsy due to abuse of pain killers and diazepam. Mr Buckley was also "buying" Oxycotin off the street. Once the dose of oxycontin and diazepam was adjusted, his mental state was improved..."<sup>7</sup>. Whilst Dr Chamberlain said in his statement that he had likely seen this document and read it, it was not only not in his file but did not explain why on Mr Buckley's next attendance, on 28 June 2012, he was prescribed according to his previous rate, and given a prescription of 40 and 80 mg per day, (in a pack of 28 tablets) with a new script issued again on 11 July 2012, 13 days later. Valium also was prescribed in a similar way as to previously.

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<sup>7</sup> Ex 1, Vol 3, p 852

51. In light of the expert evidence concerning the prescribing habits, and note keeping of Dr Chamberlain in regards to his care and treatment of Mr Buckley, I propose to refer him to the Health Care Complaints Commission for professional review.

## **FINDINGS**

I find that Phillip Buckley died on 16 September 2012 at 11 Florian Grove, Oakhurst, NSW. I am satisfied the cause of his death was combined drug toxicity. The manner of his death was misadventure.

## **RECOMMENDATIONS**

### ***To the Health Care Complaints Commission***

1. I recommend that Dr Chamberlain's professional standards be reviewed.

C. Forbes

Deputy State Coroner

30 July 2015