



HEALTH ALERT

20 February 2017

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JUDGEMENTS

Commonwealth. Federal Court

15 February 2017 - *Apotex Pty Ltd v Warner-Lambert Company LLC (No 3)* [2017] FCA 94 - PATENTS – where suppliers of generic pharmaceutical products found to have threatened to infringe patent – form of injunctive relief – whether injunction should be granted restraining generic suppliers from applying for listing of their products on the Schedule of Pharmaceutical Benefits – whether by applying for such listing suppliers would be offering to sell or otherwise dispose of products – meaning of “exploit” as defined in Schedule 1 of Patents Act 1990 (Cth) PRACTICE AND PROCEDURE – where patentee obtains injunction against supplier restraining threatened patent infringement – whether order should be made releasing patentee from undertaking as to damages previously given in support of interlocutory injunction COSTS – operation of r 25.14 of Federal Court Rules 2011 (Cth) – whether order for indemnity costs appropriate – whether supplier’s failure to accept patentee’s offer of compromise was unreasonable.

In October 2016, Apotex brought proceedings against the Pfizer Group challenging the validity of a patent. The patent covered a drug used for the treatment of pain, sold and marketed by Pfizer as 'Lyrica' in Australia. The validity of the patent was upheld and Pfizer was also granted injunctive relief against Apotex for threatened infringement. The present case, heard before Justice Nicholas, concerned the form of that injunctive relief.

Pfizer argued that applying for listing on the Pharmaceutical Benefits Scheme (PBS) constituted an infringement of its patent. The Court held that an offer to supply a patented product, even if it is not to be sold until after the patent expires infringes on the patentee's rights. Nevertheless, in the particular circumstances of the case, the PBS application fell short of an offer to 'supply' under the *Patents Act 1990* (Cth). It was stated that all Apotex proposed by applying for listing was to 'engage with the statutory scheme that may enable it to offer the product for sale at subsidised prices once the Patent has expired'. It was held that such an application was a 'mere preparatory step', in this case, the step of applying for listing was not itself an infringement.

14 February 2017 - *McAlister v State of New South Wales (No 2)* [2017] FCA 93 - PRACTICE AND PROCEDURE – representative proceedings – approval of settlement by Court pursuant to sections 33V and 33ZF of the Federal Court of Australia Act 1976 (Cth) – whether proposed settlement is fair and reasonable as between applicant and respondents.

14 February 2017 - *MZABV v Minister for Immigration and Border Protection* [2017] FCA 105 - MIGRATION – Application for extension of time to file notice of appeal from decision of Federal Circuit Court – Judicial Review – Medical Certificate – inadequate explanation for delay – No appearance by applicant – Application dismissed.

Queensland

10 February 2017 - *WorkPac Healthcare v Rovic & Ors* [2017] QDC 22 - EQUITABLE REMEDIES – INJUNCTIONS – INTERLOCUTORY INJUNCTIONS – SERIOUS QUESTIONS TO BE TRIED – BALANCE OF CONVENIENCE – where it is alleged the first defendant stole confidential information as an employee of the plaintiff and established her own business in competition with the plaintiff – whether breaches of confidential information – whether a breach of restraint clause – whether serious question to be tried – whether it was in the balance of convenience to grant the injunction.

Workpac Healthcare (**Workpac**), a company that provide labour hire, recruitment and ancillary services to clients made successfully an application to the Queensland District Court for an interlocutory injunction.. Workpac's services include the provision of staff, such as nurses and care givers (candidates), to its clients including aged care facilities, community care providers, disability care providers and hospitals.

As part of its business, Workpac recruits candidates through a detailed process of credentialing, reference checks and continued assessments to place candidates with clients. This involves data regarding clients and candidates being kept on a specifically designed management software database. Information includes a client's preferred candidate and their pay rates, applicable pay awards and contract details. It also includes the pricing structure for clients, the needs and capacity requirements of clients, competitor analysis and private information of candidates such as superannuation and bank account details.

It is alleged by Workpac that former staff stole this confidential information concerning candidates and clients by downloading over 1000 files onto a USB device and set up a competing business with Workpac. Workpac's submissions to the Court were accepted and a temporary injunction was granted restraining Workpac's former employees from accepting, soliciting or carrying out orders from any of Workpac's clients and restraining them from placing candidates with clients.

10 February 2017 - *Govier v Unitingcare Community* [2017] QCA 12 - EMPLOYMENT LAW – LIABILITY AT COMMON LAW FOR INJURY – CAUSATION AND FORESEEABILITY – FORESEEABILITY – where the appellant was an employee of the respondent – where the appellant was attacked by a co-worker – where the appellant claims damages for personal injuries arising from the respondent's negligence – whether two letters were sent from the respondent to the appellant in connection with the investigation aggravating the psychiatric injury – whether the respondent owed a duty of care in respect of the content and timing of the letters – whether the contents of the letter implied that the appellant was at risk – whether the risk of the appellant sustaining physical or psychiatric injuries was reasonably foreseeable.

New South Wales

10 February 2017 - *Health Care Complaints Commission v Sheldrick (No 2)* [2017] NSWCATOD 24 - Midwifery — protective orders — professional misconduct — scope of Tribunal power to suspend or cancel registration when practitioner registered in more than one health profession — application to cancel nursing registration where conduct in nursing not complained of — jurisdiction — procedural fairness — prohibition orders.

16 February 2017 - *Hanna v Medical Council of NSW* [2017] NSWCATOD 27 - PROFESSIONAL REGULATION – Medical Profession – Medical Council decision to suspend practitioner – Aggravated indecent assault on female employee - Appeal – Whether appropriate for protection or safety of the public to take action against practitioner – whether unacceptable risk – whether practice subject to conditions sufficient to address risk - decision confirmed.

16 February 2017 - *Health Care Complaints Commission v Emery (No. 2)* [2017] NSWCATOD 23 - COSTS – Occupational Division – Health Practitioner List – differential costs order - where complaints of unsatisfactory professional conduct and professional misconduct not proven – where complaint of impairment proven – broad brush approach.

10 February 2017 - *Health Care Complaints Commission v Attia (No 2)* [2017] NSWCATOD 25 - PRACTICE AND PROCEDURE — power to alter a decision of the Tribunal — meaning of “obvious error in the text of a notice of the decision or a written statement of reasons for the decision”.

10 February 2017 - *Idameneo (No 123) Pty Ltd v Auzcare Pty Ltd* [2017] NSWSC 55 - CIVIL PROCEDURE – application for adjournment refused – breach – terms of deed of settlement and release.

Victoria

17 February 2017 - *Stojilkovic v Romas & Ors* [2017] VSC 49 - ADMINISTRATIVE LAW – Judicial review of an opinion of a medical panel – Jurisdictional error – Inadequacy of reasons – Where medical panel found that plaintiff fit for pre-injury duties working in a commercial laundry – Where the medical panel concluded that the work duties were a significant contributing factor to injury which occurred against the background of a constitutional condition – Where aggravation to which work duties materially contributed remained symptomatic – *Ryan v The Grange at Wodonga Pty Ltd & Ors* [2015] VSCA 17 applied.

Western Australia

14 February 2017 - *Medical Board of Australia v Duck* [2017] WASAT 28 - Professional misconduct - Incompetence - Poor medical practice - Sexualised behaviour - Breach of professional boundaries - Cancellation - Disqualification from applying for registration.

7 February 2017 - *Inquest into the death of Esther NG Kit Ching* COR 2012 4823 - Inquest - death from hypoxic brina injury and hanging - Recommendations made to Eastern Health and Upton House.

LEGISLATION

As a general rule, this bulletin tracks subsidiary legislation at Commonwealth, but not at state level

Northern Territory

15 February 2017 - [Termination of Pregnancy Law Reform Bill 2017](#) - Introduced

Queensland

14 February 2017 - [Public Health \(Medicinal Cannabis Affordability\) Amendment Bill 2017](#) - Introduced

Victoria

14 February 2017 - [Food Amendment \(Kilojoule Labelling Scheme and Other Matters\) Act 2017](#) - Assent

REPORTS

Australia. Department of Health

Media releases

17 February 2017 - [Advocacy in Aged Care Takes a Step Forward](#) - A nationally consistent approach to the delivery of aged care advocacy services to help those 'lost in the system' is a step closer with the development of the draft National Aged Care Advocacy Framework and the opening of the National Aged Care Advocacy Program funding round.

17 February 2017 - [National Medical Training Advisory Network meets with Minister to discuss Australia's health workforce challenge](#) - Federal Assistant Health Minister, Dr David Gillespie, will meet in Melbourne with members of the National Medical Training Advisory Network (NMTAN) to progress crucial work on medical education and training in Australia.

16 February 2017 - [Turnbull Government has committed \\$200m to research on dementia](#) - The Australian Government welcomes today's release of the Alzheimer's Australia report on the economic cost of dementia in Australia.

15 February 2017 - [Ensuring safe and responsible supply of medicinal cannabis](#) - The Australian Government is taking further action to enable the safe and legal distribution of medicinal cannabis products for adults and children suffering from painful and chronic conditions.

10 February 2017 - [\\$8 Million for Expanded Lighthouse Hospital Project](#) - The Minister for Indigenous Health, the Hon Ken Wyatt AM, MP has announced \$8 million to expand a project that is transforming hospital care for Aboriginal and Torres Strait Islander people with Acute Coronary Syndrome.

10 February 2017 - [Healthy Food Partnership – Tackling Australia's Obesity Crisis](#) - Tackling Australia's obesity crisis is a high priority for the Federal Assistant Minister for Health, Dr David Gillespie, who chaired the sixth meeting of the Healthy Food Partnership in Canberra to discuss action on providing consumers with healthier food choices.

10 February 2017 - [Indigenous All Stars game tackles Indigenous smoking](#) - The NRL Indigenous All Stars game in Newcastle is helping spread the word to Aboriginal and Torres Strait Islander Australians that a smoke-free life is better than scoring a try when it comes to better health and wellbeing.

Private Health insurance Circulars

[PHI 08/17 Private Health Insurance Protheses List Benefits Issues with Access Database Version](#)

Australian Digital Health Agency

15 February 2017 - [Clinical Informatics Unit Announcement: Participation Data Specification Release](#)

14 February 2017 - [National Digital Health Strategy consultation: Emerging themes on the future of digital health](#) - What are we hearing from the Australian community on what makes the ideal health service? What are the key priorities we should focus on? Over 1,000 people completed our online survey and sent us submissions, along with over 3,000 attended workshops, meetings, town halls, forums, and webcasts to share with us their thoughts on where they see the future of health and care.

10 February - [SNOMED International now accepting applications for Management Board positions](#)
The application deadline is 28 February 2017.

Australia. Health Practitioner Regulation Agency and the boards

16 February 2017 - [Quarterly registration data released](#) - The National Psychology Board has released its quarterly registration data.

15 February 2017 - [NSW chiropractor who claimed cancer cure convicted in landmark case](#) - A New South Wales chiropractor has been convicted of false advertising after he claimed to be able to prevent, treat and cure cancer in his advertising.

14 February 2017 - [Regulation at work: The Aboriginal and Torres Strait Islander health workforce in 2015/16](#) - A profession-specific annual report summary that looks into the work of the Aboriginal and Torres Strait Islander Health Practice Board of Australia (the Board) over the 12 months to 30 June 2016 has now been published.

14 February 2017 - [Newsletter from the National Board](#) - The Nursing and Midwifery Board of Australia releases its latest newsletter.

Australia. National Health & Medical Research Council (NHMRC)

17 February 2017 - [NHMRC Health Tracker – February 2017](#)

Australia. Pharmaceutical Benefits Scheme

17 February 2017 - [PBS Botulinum Toxin Program Changes 1 January - 1 March 2017](#) - Changes are being made under the PBS Botulinum Toxin Program to enable eligible prescribers to write more than one prescription for botulinum toxin for the same person on the same day in some circumstances.

15 February 2017 - [March 2017 PBS Schedule](#) - In October and November 2016 the Department notified software vendors, pharmaceutical representative bodies and other stakeholders of the intention to pause the Schedule of Pharmaceutical Benefits (the Schedule) in March 2017. The purpose of this pause is to assist in a major system upgrade.

Australian Prudential Regulation Authority (APRA)

14 February 2017 - [APRA has released private health insurance statistics for December 2016](#)

Australia. Therapeutic Goods Administration (TGA)

16 February 2017 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - Added Rituximab (MabThera).

15 February 2017 - [Consultation: Changes to accessing unapproved therapeutic goods through the Authorised Prescriber \(AP\) and Special Access Schemes \(SAS\)](#) - The TGA is seeking comments from interested parties on the proposed changes to the Special Access Scheme (SAS) and the Authorised Prescriber Scheme. Closing date: 29 March 2017.

14 February 2017 - [Consultation: Reforms to the regulatory framework for complementary medicines: Assessment pathways](#) - The TGA is seeking comments from interested parties on reforms to the regulatory framework for complementary medicines. Closing date: 28 March 2017.

14 February 2017 - [Etopophos \(etoposide phosphate\) powder for injection vials and Vepesid etoposide capsules](#) - Medicine shortages - update.

14 February 2017 - [Conference participation by the TGA](#) - The TGA is participating in these events and conferences.

13 February 2017 - [Submissions and TGA response: paracetamol and ibuprofen: proposed additional advisory statement](#) - Public submissions on advisory statements for medicines containing paracetamol with ibuprofen: Submissions received and TGA response.

13 February 2017 - [Submissions and TGA response: Non-steroidal anti-inflammatory drugs: proposed additional advisory statement](#) - Public submissions on proposed additional advisory statement for OTC NSAIDs: Summary of submissions received and TGA response.

Australian Institute of Health & Welfare

16 February 2017 - [Health performance reports](#) - Healthcare-associated *Staphylococcus aureus* bloodstream infections in 2015–16 and Hospitalisations for mental health conditions and intentional self-harm in 2014–15.

7 February 2017 - [Deaths \(mortality\) update 2017 \(web\)](#)

Australian Commission on Safety and Quality in Health Care

13 February 2017 - [National guidelines for on-screen presentation of discharge summaries](#) - The *National guidelines for on-screen presentation of discharge summaries* specify the sequence, layout and format of the core elements of hospital discharge summaries, as displayed in clinical information systems. The guidelines were developed through extensive research, consultation and iterative testing with more than 70 clinicians.

Australian Capital Territory (ACT). Health Directorate

14 February 2017 - [System-wide review of ACT health data and reporting to be undertaken](#) - A comprehensive, system-wide review of ACT Health data and reporting processes will be undertaken to ensure data management and quality assurance processes are robust and accurate. Minister for Health Meegan Fitzharris said the delivery of quality health services to the Canberra community was the ACT Government's number one priority, however the accuracy of data continues to be a concern and must be resolved.

13 February 2017 - [Make a pledge to eat well and be active this Healthy Weight Week](#) - Canberrans are encouraged to get involved in Australia's Healthy Weight Week (13 - 19 February 2017) by making healthy meals at home, getting active, and participating in some of the events around the ACT this week. "Australia's Healthy Weight Week is a great reminder that we need to improve what we are eating and focus on getting more healthy foods into our lifestyles such as five serves of vegetables and two serves of fruit a day," Minister Fitzharris said.

New South Wales. Ministry of Health

Media Releases

14 February 2017 - [Care and convenience for patients with new PET scanner at St George Hospital](#) - Cancer patients in the St George and Sutherland Shire community will have the convenience of state-of-the-art diagnosis and treatment in their local hospital with the opening of a Positron Emission Tomography (PET) scanner at St George Hospital.

New South Wales. Health Care Complaint Commission

13 February 2017 - [Dr Robert Starkenburg – Registration cancelled](#) - The Commission prosecuted a complaint before the New South Wales Civil and Administrative Tribunal ('the Tribunal') against Dr Robert Starkenburg, a dentist in Bondi Junction. On 9 February 2017, the Tribunal found proved the Commission's complaint that Dr Starkenburg had engaged in professional misconduct.

13 February 2017 - [Ms Mabelle Sheldrick – Stage 2 - Midwifery registration cancelled and prohibition orders imposed](#) - On 10 February 2017 the Tribunal handed down its second stage decision on protective orders. The Tribunal cancelled Ms Sheldrick's registration in midwifery and ordered that she may not reapply for registration for a period of at least 16 months.

Northern Territory. Department of Health

14 February 2017 - [Health campaign encourages Territorians to 'use condoms and get tested'](#) - National Condom Day, which falls on Valentine's Day each year, provides a timely reminder about the importance of using protection when engaging in sexual activity and getting regular sexual health check-ups.

Queensland. Department of Health

16 February 2017 - [Clock runs out for Commonwealth intervention in Sunshine Coast med school](#) - The Turnbull Government has again failed to deliver the 15 medical school places needed to ensure a

world class medical school can open on the Sunshine Coast in 2019. Health and Ambulance Services Minister Cameron Dick said yesterday's deadline came and went despite the Commonwealth being warned last year that the school would not open in 2019 without confirmation of the places by February 15, 2017.

16 February 2017 - [Ryan's Rule: for all patients, families and carers](#) - Ryan's Rule provides patients and families a clear process to follow if they are concerned about a patient in hospital who is getting worse, not doing as well as expected, or not improving.

15 February 2017 - [Take a virtual tour of Roma Hospital](#) - Maranoa residents are invited to take a virtual tour and view detailed designs of the new \$70 million Roma Hospital at two public information sessions on February 23. The Turnbull Government has again failed to deliver the 15 medical school places needed to ensure a world class medical school can open on the Sunshine Coast in 2019.

15 February 2017 - [Plan to tackle ice drug developed with communities](#) - The Palaszczuk Government's multi-pronged strategy to tackle the evil of the drug ice (crystal methamphetamine) will go to the heart of this growing problem by developing solutions directly with the communities battling the effects of the insidious drug.

15 February 2017 - [Queensland's premier hospital celebrates milestone](#) - A major medical milestone is being celebrated, with the Royal Brisbane and Women's Hospital marking 150 years of caring for Queenslanders.

15 February 2017 - [Sammy the Greyhound visits kids doing it ruff](#) - Sammy the greyhound has made a Valentine's Day visit to the pediatric ward at Toowoomba Hospital, brightening the faces of young patients and staff.

15 February 2017 - [Strategies for dealing with needle phobia during vaccinations](#) - Roughly a quarter of the population has a fear of needles and with school vaccinations coming up, there's a good chance you're about to find out if your kids are included in that quarter. If your child is showing signs of distress or fear about upcoming injections, here are some strategies you can use to start managing their nervousness around getting vaccinated.

13 February 2017 - [South West endoscopy trial an Australia first](#) - Many South West residents will be saved a round trip to Toowoomba for routine endoscopy and colonoscopy procedures thanks to an Australian first pilot program.

13 February 2017 - ['A good doctor is a good human being'](#) - In this guest post, Dr Akmez Latona - originally from Mauritius - tells the story of his time in the emergency department at the Princess Alexandra Hospital in Brisbane, and of the importance of keeping humanity in the picture as a doctor.

South Australia. (SA) Department for Health & Ageing

16 February 2017 - [Media release: SA Health monitors hospital infections](#) - SA Health will continue to monitor rates of healthcare associated infections in public hospitals following today's release of the latest Australian Institute of Health and Welfare report into *Staphylococcus aureus* bloodstream infection (SAB).

14 February 2017 - [Media release: Meningococcal case - February 2017](#) - A case of invasive meningococcal disease has been notified in a two-year-old boy from regional South Australia. The child has been admitted to hospital in a stable condition. The meningococcal strain has been identified as serogroup W-135.

Victoria. Department of Health

17 February 2017 - [World Class Cancer Research Boost To Save Lives](#) - Victorians fighting cancer will get an even better chance of survival thanks to an Andrews Labor Government funding boost to do more clinical trials and undertake the next generation of research into the deadly disease. Minister for Health Jill Hennessy today announced \$20 million over four years for the Victorian Comprehensive Cancer Centre alliance to deliver new clinical trials for cancer patients, as well as an additional \$12.2 million to support cancer research projects through the latest Victorian Cancer Agency funding round.

16 February 2017 - [Call To Honour Victoria's Dedicated Health Volunteers](#) - Victorians are being urged to recognise local volunteer champions whose inspiring work has made a real difference to people's health and wellbeing. Minister for Health Jill Hennessy today called for nominations for the 2017 Minister for Health Volunteer Awards. The awards will be presented at a special ceremony on 23 May.

15 February 2017 - [Southern Hemisphere First For The New Monash Children's](#) - Construction of the world class \$250 million Monash Children's Hospital is complete, with the latest imaging equipment now being installed to make diagnostic scans and procedures less scary and upsetting for children.

13 February 2017 - [A Healthier Latrobe Valley Thanks To Health Study](#) - The Hazelwood Long Term Health Study is continuing to provide vital insight into how best to improve the health and wellbeing of the Latrobe Valley community in the wake of the Hazelwood Mine Fire.

Western Australia. Department of Health

Media Releases

16 February 2017 - [Biting insect and mosquito-borne disease risk increase across Western Australia](#) - The Department of Health is warning residents and travelers to take precautions against biting insects following the widespread rainfall and recent flooding events across Western Australia.

13 February 2017 - [Do not let your Year 8 miss important, free immunisations](#) - The Department of Health is reminding parents of Year 8 students to sign and return their immunisation consent form, to ensure their child does not miss out on important childhood vaccines.

10 February 2017 - [Health warning following recent floods](#) - The Department of Health is advising people in the communities of Katanning, Wagin, Narrogin, Williams and Northam, (downstream on the Avon River) to avoid playing in or around storm water following recent flooding in the area.

New Zealand. Ministry of Health

15 February 2017 - [Summary of Public Consultation on the Update of the Health of Older People Strategy](#) - This publication presents the Ministry of Health's analysis of feedback from the Health of Older People Strategy consultation that took place between 13 July and 7 September 2016.

10 February 2017 - [Guidance on Infectious Disease Management under the Health Act 1956](#) - This guidance explains new measures, concerning the notification and management of infectious diseases, which were recently incorporated into the Health Act 1956 and which commenced on 4 January 2017.

Australian Medical Association (AuMA)

17 February 2017 - [Public hospitals in state of emergency](#) - Australia's public hospitals are failing to meet targets, and are even going backwards, as a result of inadequate and uncertain Commonwealth funding.

16 February 2017 - [New Ministers talk to Australian Medicine](#) - Health Minister Greg Hunt and Indigenous Health Minister Ken Wyatt each spoke to Australian Medicine this week about their aspirations for their new roles.

16 February 2017 - [AuMA welcomes appointment of new Director of Professional Services Review](#) - Long-time AuMA member and distinguished medical practitioner, Dr Julie Quinlivan, has been appointed as Director of the Professional Services Review (PSR).

16 February 2017 - [The Ides of January: Australian Medicine](#) - This week in Australian Medicine, AuMA Vice President, Dr Tony Bartone, discusses what GPs want from their new Health Minister.

16 February 2017 - [Complementary medicines in pharmacies in the spotlight](#) - Consumer advocacy group Choice has revealed this week that nearly a third of Australian pharmacists are recommending complementary medicine products that are not evidence-based.

16 February 2017 - [Managing Cancer Patients in General Practice - MJA Active Learning Module](#) - AuMA members can enjoy at 20% discount when attending the MJA CPD team's latest seminar Managing Cancer Patients in General Practice in Sydney.

16 February 2017 - **Skilled Occupations List Review** - During a forum this week in Canberra, the AuMA told a Federal Government Review of the Skilled Occupation List (SOL) that Australia has more than enough doctors.

16 February 2017 - **AuMA Council of General Practice at work** - The AuMA Council of General Practice (AMACGP) is meeting in Canberra this week, bringing together GPs from across the country to discuss key policy challenges.

ABOUT US

Michael Regos



Michael is the head of the DLA Piper health litigation group.

He practises in the areas of health law, insurance law, medical negligence and coronial enquiries. He represents Victorian public hospitals and their insurers, the Victorian Managed Insurance Authority and is the solicitor of choice for Australia's second-largest private health operator.

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