



# HEALTH ALERT

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## JUDGMENTS

### Queensland

10 July 2014 - [Guardianship and administration application in the matter of MDC \[2014\] QCAT 338](#)

The wife of MDC, an incapacitated man, applied to the Queensland Civil and Administrative Tribunal seeking an order about an enduring power of attorney (amongst other things).

By documents dated 24 March 2013, MDC appointed his son and his son's wife to be his attorneys. At the time, the son was a general practitioner at a medical centre where MDC was a regular patient. The son's wife was the practice manager at the centre.

Under the *Power of Attorneys Act* (QLD), an eligible attorney must not be a "health provider" for the principal. The applicant claimed that the son and his wife were ineligible to be appointed as attorneys because of their status as health providers. This argument succeeded.

The son was found to be his father's medical practitioner and therefore a health provider under the Act, despite the fact that he was not his father's regular doctor. The Tribunal made this finding on the basis that the son had received letters and assessments relating to MDC and he was therefore considered part of the team providing the medical care.

The Tribunal also found that the category of "health provider" was wide enough to include the son's wife in her role as practice manager of the centre. Even though she was not a medical practitioner, she was nevertheless precluded from being an eligible attorney for MDC.

### Victoria

5 August 2014 - [Kowal v O'Day & Ors \[2014\] VSC 347](#)

Dr Lionel Kowal (the plaintiff) applied to the Supreme Court seeking an order quashing the decision of a medical panel that was constituted by the first and second defendants.

Dr Kowal was an ophthalmologist who was consulted by the claimant about how to treat his existing strabismus and diplopia. Dr Kowal recommended surgery. The claimant alleged that the surgery was performed negligently and that he suffered injury as a result.

In reviewing the panel's decision, the Supreme Court of Victoria made two significant and widely applicable points about the manner in which medical panels are required to make determinations.

Firstly, the Court confirmed that the panel could only assess the claimant's injury as a "significant injury" if that conclusion was consistent with the American Medical Association Guides. Dr Kowal argued that the claimant's pre-existing impairment was 100%. Therefore, surgery could not have caused additional impairment which would constitute a "significant injury" under the Act. The Court held that the panel appropriately used the Guide, which did not oblige the panel to conclude that the pre-existing impairment was at 100%.

Secondly, the Court made clear that the panel was required to conduct its examination independently, using its own methodology and reasoning. While the panel was permitted to consider reports relating to the claimant's injury, it was not permitted to rely so heavily on those reports that it failed to reach its conclusion independently.

While Dr Kowal's application was unsuccessful, the Court's judgment serves as a useful guide for parties wishing to challenge a medical panel decision.

### New South Wales (NSW)

5 August 2014 - [Stanton v Fell \(No 2\) \[2014\] NSWSC 1052](#) - Costs - defamation - *Defamation Act 2005* (NSW), s 40 - verdict for defendant - plaintiff to pay defendant's costs - order sought that costs be paid on an indemnity basis - whether plaintiff unreasonably failed to accept settlement offer made by the defendant - whether interests of justice require otherwise than an order that costs be paid on an indemnity basis - defendant showed more than the plaintiff merely failing in proceedings - *Haddon v Forsyth* (No 2) [2011] NSWSC 693 - plaintiff's failure to accept first and second offers was unreasonable - interests of justice require that defendant be fully indemnified - plaintiff to pay defendant's costs on an indemnity basis.

## Western Australia (WA)

4 August 2014 - [Frew v Donate Life \(N.M.A.H.S.\) \[2014\] WADC 96](#) - Workers' compensation - appeal from workers' compensation arbitration service - appeal against finding of period of total incapacity - requirements of rules of natural justice - Whether appeal involves a question of law.

## United Kingdom

31 July 2014 - [Chakrabarty v Ipswich Hospital National Health Service \(NHS\) Trust & Anor \[2014\] EWHC 2735](#) - claimant employed by the Ipswich Hospital NHS Trust seeking permanent injunction restraining Trust from referring case to capability hearing panel to consider the extent of any deficiencies in capability or competence to work as Consultant in Cardiology and General Medicine.

## LEGISLATION

### Commonwealth

6 August 2014 - [National Health \(Listed drugs on F1 or F2\) Amendment Determination 2014 \(No. 7\) \(No. PB 66 of 2014\)](#).

### Victoria

5 August 2014 - [Tobacco Amendment Bill 2014](#).

## REPORTS

### Australia. Department of Health & Ageing

Media releases

5 August 2014 - [Improvement in low birthweights welcome news](#).

4 August 2014 - [Funding For WA hospitals rising, not falling](#).

4 August 2014 - [\\$3.8 Million Investment to Boost Medical Training in Wagga Wagga](#).

### Australia. Health Practitioner Regulation Agency and the boards

7 August 2014 - The National Nursing and Midwifery Board is inviting feedback on draft standards for practice for enrolled nurses. [Read article](#).

7 August 2014 - National Board publishes questions and answers on request for tender. [Read article](#).

7 August 2014 - The Chiropractic Board of Australia releases its latest Newsletter. [Read article](#).

7 August 2014 - The Osteopathy Board of Australia releases its latest communiqué. [Read article](#).

7 August 2014 - The Psychology Board releases Issue 11 of Connections newsletter. [Read article](#).

6 August 2014 - The National Osteopathy Board has released its quarterly registration data. [Read article](#).

6 August 2014 - The National Pharmacy Board has released its quarterly registration data. [Read article](#).

6 August 2014 - The National Podiatry Board has released its quarterly registration data. [Read article](#).

5 August 2014 - The Occupational Therapy Board of Australia releases its latest communiqué. [Read article](#).

5 August 2014 - The Optometry Board of Australia releases its latest communiqué. [Read article](#).

5 August 2014 - The National Aboriginal and Torres Strait Islander Board has released its quarterly registration data. [Read article](#).

4 August 2014 - Call for applications for physiotherapists to join the Physiotherapy Board of Australia's list of approved persons for appointment to panels and/or the Physiotherapy Advisor List. [Read article](#).

4 August 2014 - The Chiropractic Board releases its latest communiqué. [Read article](#).

4 August 2014 - Call for applications for physiotherapists to join the Physiotherapy Board of Australia's list of approved persons for appointment to panels and/or the Physiotherapy Advisor List. [Read more.](#)

4 August 2014 - The Medical Radiation Practice Board of Australia releases its latest communiqué. [Read article.](#)

1 August 2014 -The Chinese Medicine Board of Australia is pleased to publish the updated presentation following its forum held in Sydney on Monday 23 June 2014. [Read article.](#)

1 August 2014 - The Physiotherapy Board of Australia releases its latest communiqué. [Read article.](#)

### **Australia. National Health & Medical Research Council (NHMRC)**

8 August 2014 - [NHMRC unveils plan for \\$200m dementia boost.](#)

6 August 2014 - [Public consultation opens on draft Statement on Consumer Involvement in Health and Medical Research.](#)

5 August 2014 - [New collaborations seek to solve infectious disease challenges.](#)

### **Australia. Therapeutic Goods Administration (TGA)**

7 August 2014 - [Public submissions on scheduling matters referred to the ACCS#10 \(March 2014\).](#) Further public submissions made in response to the invitation for public submission on the proposed amendments to the Poisons Standard,

7 August 2014 - [Reasons for scheduling delegates' final decisions, August 2014.](#) Reasons for decisions by the Delegate of the Secretary to the Department of Health for amendments to the Poisons Standard.

6 August 2014 - [TGA presentation given at ASMI workshop, 24 July 2014.](#) This presentation provided an overview on food/medicine interface issues.

5 August 2014 - [Minor variations to registered prescription medicines: chemical entities and biological medicines.](#)

5 August 2014 - [Updates to the Prescribing medicines in pregnancy database.](#) The Prescription Medicines in Pregnancy database has been updated.

4 August 2014 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\).](#) Added Macitentan (Opsumit), Radium (223Ra) dichloride (Xofigo) and Vortioxetine hydrobromide (Brintellix).

4 August 2014 - [Consultations on adoption of European Union guidelines in Australia: Outcome of previous consultation.](#) EU/ICH guidelines adopted by the TGA, effective 1 August 2014.

4 August - [Laparoscopic power morcellators.](#) There is currently insufficient evidence in the Australian population to conclude that the use of laparoscopic morcellators increases the risk or rate of adverse outcomes by spreading cancerous tissue through the abdomen.

1 August 2014 - [Consultations on adoption of European Union guidelines in Australia.](#)

1 August 2014 - [Medicines Safety Update, Volume 5, Number 4, August 2014.](#)

### **Australian Institute of Health & Welfare**

6 August 2014 - [Patterns in use of aged care: 2002-03 to 2010-11 | media release.](#)

5 August 2014 - [Birthweight of babies born to Indigenous mothers | media release.](#)

5 August 2014 - [Determinants of wellbeing for Indigenous Australians.](#)

### **Australian Commission on Safety and Quality in Health Care**

4 August 2014 – On the Radar – Issue 185 ([PDF 101KB](#)) ([Word 124KB](#)).

### **New South Wales. Ministry of Health**

5 August 2014 - [Applications invited for human genomics research grants.](#)

### Victoria. Department of Health

4 August 2014 - [Coalition to introduce smoke-free dining.](#)

7 August 2014 - [Legislation to tackle alcohol related harm.](#)

### Western Australia. Department of Health

Operational Directives (OD)

6 August 2014 - [OD 0546/14](#) Guidelines for the Public Health Management of Haemophilus Influenzae type b invasive infection This operational directive outlines the recommendations for the public health management of Haemophilus influenzae type b invasive infection.

6 August 2014 - [OD 0545/14](#) National Guidelines for the Public Health Management of Murray Valley Encephalitis Virus. This Operational Directive outlines the recommendations for the public health management of Murray Valley Encephalitis Virus.

6 August 2014 - [OD 0544/14](#) Medical Position Titles Policy and Procedures Position titles for medical practitioners in WA Health are standardised. This assists WA Health to accurately profile, map, plan and manage the composition of the medical workforce. The Medical Position Titles Policy, Procedure and Titles have been reviewed in consultation with key stakeholders across WA Health.

### New Zealand. Ministry of Health

1 August 2014 - [Palliative Care and Māori from a Health Literacy Perspective.](#)

### United Kingdom. Department of Health (DH)

7 August 2014 - [Ebola: government response.](#)

7 August 2014 - [Supplying asthma inhalers to schools for emergency use.](#)

7 August 2014 - [Healthcare UK review of 2013-14 and business plan for 2014-15.](#)

7 August 2014 - [Healthcare UK reports significant progress in its first 18 months.](#)

6 August 2014 - [Campylobacter: government response.](#)

6 August 2014 - [NHS outcomes framework review.](#)

5 August 2014 - [Disclosure & Barring Service \(DBS\) guide to eligibility.](#) Part of a collection: [DBS checking service guidance.](#)

5 August 2014 - [Adult social care efficiency tool.](#)

4 August 2014 - [NHS Injury Costs Recovery scheme: April 2014 to March 2015](#) Part of a collection: [DH NHS Injury Costs Recovery scheme.](#)

4 August 2014 - [NHS waiting times: job not done.](#)

### United States of America. Department of Health & Human Services (HHS)

7 August 2014 - [More physicians and hospitals are using electronic health records \(EHRs\) than before.](#)

4 August 2014 - [HHS awards more than \\$106 million to support state home visiting programs.](#)

### Australian Medical Association (AuMA)

8 August 2014 - [AuMA President, A/Prof Brian Owler, The Sydney Adventist Hospital Doorstop, 8 August 2014. Read more.](#)

1 August 2014 - [Constructive discussions on co-payments.](#) AuMA President, A/Prof Brian Owler, said today that he had a constructive meeting last night with Health Minister, Peter Dutton, to discuss the AuMA's alternative plan to address concerns. [Read more.](#)

## British Medical Association

7 August 2014 - **Standardised tobacco packaging evidence 'stronger than ever.'** Efforts to introduce standardised tobacco branding have been boosted.

6 August 2014 - **General Practitioner (GP) leaders take practice closure petition to Downing Street.** GP leaders joined campaigners to deliver a petition to the government today, calling for action to save practices from funding cuts.

6 August 2014 - **Juniors' workload threatens patient care.** The excessive workload of junior doctors must be addressed.

5 August 2014 - **Waiting time measures point to rationing of care, say doctors leaders.** Efforts to tackle patient waiting times are further evidence that burdens on the NHS are leading to a rationing of care, the BMA has warned.

5 August 2014 - **Phone triage no solution to GP workload issues.** The BMA has called for an adequately staffed GP workforce after a study highlighted inefficiencies.

1 August 2014 - **Minimum alcohol price targets heavy drinkers, says study.** Pressure is mounting on the government to implement a minimum alcohol price following a study.

## Canadian Medical Association

31 July 2014 - **Ebola guidance issued for Canadian MDs.**

## American Medical Association (AMA)

1 August 2014 - **AMA Applauds Congress for Taking Action to Address Veterans' Access to Medical Care.** The American Medical Association is pleased that Congress has taken action to ensure veterans can access the health care they need in a timely fashion outside of the U.S. Department of Veterans Affairs (VA).

1 August 2014 - **AMA Statement on FDA Proposal Regarding Diagnostic Testing.** The American Medical Association (AMA) believes that laboratory developed testing (LDT) services offer patients access to safe and high quality diagnostic services that are essential to patient care.

## 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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