



HEALTH ALERT

11 April 2016

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JUDGMENTS

Australia. High Court

5 April 2016 - [Medical Board of Australia v Broadbent \[2016\] HCASL 22](#) - Special Leave Application

Australia. Federal Court

1 April 2016 - [Primary Health Care Limited v Commonwealth of Australia \[2016\] FCA 313](#)

In 2009, after approximately five years of operation, Primary Health Care Limited (PHC) applied to register the name "Primary Health Care" as a trade mark. The Commonwealth opposed the application on the grounds that the mark did not actually distinguishing the services, the use was contrary to law, and the mark was likely to deceive or confuse. These are grounds for objection under sections 41 to 43 of the Trade Marks Act.

In relation to the mark's ability to distinguish, the court examined the nature of the services PHC provided. PHC argued that, as the mark was to be used and interpreted by medical professionals in a private medical context, this was sufficiently narrow to enable services to be distinguished. However, the Commonwealth argued that PHC performed many services, and not just for doctors but other health professionals and the public. This diversity of markets in which PHC operated and the broad audience for the mark meant it was not capable of actually distinguishing the services provided and was merely descriptive.

The Commonwealth then argued that, in light of the people who might rely on the mark, exclusive use of it would be likely to cause confusion or mislead contrary to the Australian Consumer Law. People might assume that PHC was responsible for the all the services and actual health care in every centre bearing the mark, which was inaccurate. Ultimately, the Commonwealth was successful on all grounds and registration of the trade mark "Primary Health Care" was refused.

New South Wales

6 April 2016 - [Fan v South Eastern Sydney Local Health District \[2016\] NSWCA 64](#)

Mr Fan presented to three different hospitals complaining of abdominal pain and vomiting. He was subsequently diagnosed with an inflammation of the bile ducts combined with the presence of gallstones. During this time he had a successful endoscopic procedure but three months later he underwent a cholecystectomy to remove his gallbladder. Mr Fan argued that not only did the original diagnoses fail to include acute cholecystitis which would have prompted a more timely cholecystectomy, but that the hospitals breached their duty of care to detect other health concerns, which led to a series of subsequent injuries.

The court looked at what was required of the hospitals from a clinical practice perspective, finding that the treatment Mr Fan received was correct for the original diagnoses, regardless of whether there was then a need to reassess and re-diagnose. The hospitals were found not to be at fault for rescheduling his operation for valid reasons, even after the cholecystectomy was clinically advised. In relation to the failure to detect other clinical indicia that led to different problems, such as the hospitals' alleged failure to identify his high blood sugar levels meaning his diabetes diagnosis was delayed, the court dismissed Mr Fan's complaints. The hospitals were not subject to a higher standard of care and, in the absence of further concerns raised by Mr Fan at the time, were not required to test for anything that was not exhibiting symptoms. The routine testing regime, such as the random glucose readings, was proper medical practice.

5 April 2016 - [Health Care Complaints Commission v Marino \[2016\] NSWCATOD 37](#)

Health practitioner – statement of patient not called to give evidence admitted- allegations of sexual and other misconduct- findings of unsatisfactory professional conduct and professional misconduct.

6 April 2016 - [Health Care Complaints Commission v Vega \(No 2\) \[2016\] NSWCATOD 38](#)

Appropriate protective orders following finding of professional misconduct; costs

30 March 2016 - [Health Care Complaints Commission v Leighton \[2016\] NSWCATOD 33](#)

Psychologist, impairment, drug use, unethical conduct, sexual relationship

Victoria

1 April 2016 - [Nursing and Midwifery Board of Australia v Dutton \(Review and Regulation\) \[2016\] VCAT 495](#) - Notification in relation to the professional conduct of a midwife as primary carer following an

attempted homebirth and subsequent delivery of a stillborn baby by emergency Caesarean at hospital; Notice of Allegations referred to the Tribunal pursuant to s 193(1)(a)(i) of the Health Practitioner Regulation National Law (Victoria) Act 2009 (National Law); Australian Nursing and Midwifery Council's National Competency Standards; Admitted professional misconduct and unsatisfactory professional performance; Findings of professional misconduct and unprofessional conduct; Determinations include: reprimand, suspension for period of six months; extensive additional conditions upon registration, involving supervision and restricted hospital practice; additional educational requirements; and audit.

1 April 2016 - [Medical Board of Australia v Koniuszko \(Review and Regulation\) \[2016\] VCAT 492](#)

Health Professions Regulation Act 2005 (Vic), section 77 – Health Practitioner Regulation National Law Act 2009 (Vic), section 196 – admission of professional misconduct by medical practitioner who failed to comply with the requirements of the Drugs Poisons and Controlled Substances Act 1981 (Vic) and the Drugs Poisons Controlled Substances Regulations 2006 (Vic) – admissions of professional misconduct in respect of treatment of close family members, including by prescribing Schedule 8 poisons and making referrals – admissions of professional misconduct in respect of inadequate medical records and communications with other medical practitioners – findings and decisions/determinations.

4 April 2016 - [Finding Without Inquest into the Death of Frank Edward Frood](#)

United Kingdom

5 April 2016 - [St Mary's Medical Centre v Care Quality Commission \[2016\] UKFTT 212 \(HESC\)](#)

7 April 2016 - [Wastenev v East London NHS Foundation Trust \(Religion or Belief Discrimination\) \[2016\] UKEAT 0157_15_0704](#)

Complaints had been made by a junior worker of Muslim faith against the Claimant, a more senior manager position who was a Christian. The complaints related to various interactions with the Claimant which the complainant characterised as “grooming”; these included the Claimant’s praying with the junior worker and the laying on of hands, giving a book to that worker, which concerned the conversion to Christianity of a Muslim woman, and inviting her to various services and events at the Claimant’s Church. The Respondent had investigated the complaints under its disciplinary procedure and had found the Claimant guilty of serious misconduct, namely the blurring of professional boundaries and the subjection of a junior colleague to improper pressure and unwanted conduct. The Claimant was given a final written warning, reduced on appeal to a first written warning.

LEGISLATION

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

7 April 2016 - [Therapeutic Goods \(Foreign Countries\) Determination 2016](#) - F2016L00494 as made

6 April 2016 - [Private Health Insurance Legislation Amendment \(Risk Equalisation Jurisdiction\) Rules 2016](#) - F2016L00492 as made

New South Wales

6 April 2016 - [Assisted Reproductive Technology Amendment Act 2016 No 11](#) - assent

Queensland

1 April 2016 - [Disability Services Amendment Regulation \(No. 1\) 2016](#) - notified

Victoria

4 April 2016 - [Public Health and Wellbeing Regulations 2009 \(No. 178 of 2009\)](#) - commencement

REPORTS

Australia. Department of Health

Media releases

6 April 2016 - [Statement from Minister Nash following meeting of remote health providers](#)

4 April 2016 - [Appointments to the Australian Medical Research Advisory Board](#) - The Australian Government's landmark Medical Research Future Fund has taken another important step towards delivering Australia's unlimited potential in realising life-saving and life-changing medical breakthroughs.

3 April 2016 - [Cheaper medicines from this weekend](#) - Millions of prescriptions for common medicines, treating everything from cholesterol to high blood pressure, will drop in price for consumers by as much as \$20 – or 60 per cent – from this weekend, many for the first time, Minister for Health Sussan Ley announced today.

31 March 2016 - [A Healthier Medicare for chronically-ill patients](#) - The Australian Government will revolutionise the way we care for Australians with chronic diseases and complex conditions – aiming to keep them out-of-hospital and living happier and healthier lives at home.

31 March 2016 - [Health Care Homes to keep chronically-ill out-of-hospital](#) For the first time, Australians living with multiple complex and chronic illnesses will be able to officially enroll with their local GP to have all of their conditions and health care needs conveniently managed in one place.

31 March 2016 - [New Medicare payment model for chronically-ill patients](#) - Improving patient outcomes will be at the centre of a new, modern Medicare payment system that will give general practice and primary health care services greater flexibility to deliver chronically-ill patients the broad range of health care services they need to live a long and healthier life and avoid unnecessary hospital visits.

31 March 2016 - [Rural & Remote communities to get better chronic care](#) - The Australian Government's revolutionary Healthier Medicare reform package, will provide people living with chronic and complex conditions in rural and remote communities with care better tailored to their needs.

31 March 2016 - [The Committee for Economic Development of Australia \(CEDA\)](#) - The Minister for Health, Sussan Ley addressed the Committee for Economic Development of Australia (CEDA) at the Grand Ballroom, Hilton in Brisbane on 31 March 2016.

31 March 2016 - [Turnbull Government to support chronic disease management for Indigenous Australians](#) - The Australian Government's Healthier Medicare package will better support Aboriginal Medical Services to tackle the growing prevalence of complex chronic conditions amongst Indigenous Australians through coordinated care.

31 March 2016 - [My Health Record & Improved Health Data to better coordinate care](#) - The Australian Government will drive better patient outcomes for Australians living complex chronic illness as part of its Healthier Medicare reform package, by improving digital health records and data around health outcomes that will make it easier to co-ordinate their care and measure their progress.

Private Health insurance circulars

7 April 2016 - [PHI 24/16 - New Private \(same day\) Hospital Information](#)

4 April 2016 - [PHI 23/16 - New Private \(same day\) Hospital Information](#)

4 April 2016 - [PHI 22/16 - Private Hospital Information](#)

Australia. Health Practitioner Regulation Agency and the boards (AHPRA)

7 April 2016 - [Call for applications](#) for appointment to the Chinese Medicine Accreditation Committee.

7 April 2016 - [Tribunal suspends midwife's registration for six months](#) - A tribunal has suspended the registration of a practitioner for six months who failed to provide clinically appropriate midwifery care to a patient.

6 April 2016 - [AHPRA releases quarterly performance reports](#) - New information about the performance of the Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards in each state and territory has been released today to improve transparency and accountability.

6 April 2016 - [Communiqué from the Board](#) - The Physiotherapy Board of Australia releases its latest communiqué.

6 April 2016 - [Newsletter from the Board](#) - The Podiatry Board of Australia releases its latest newsletter.

5 April 2016 - [Communiqué from the Board](#) - The Podiatry Board of Australia releases its latest communiqué.

1 April 2016 - [Dental regulation at work in Australia, 2014/15](#) - The Dental Board of Australia (the Board) has released its report for 2014/15.

1 April 2016 - [Medical regulation at work in Australia, 2014/15](#) - The Medical Board of Australia (the Board) has released its summary for 2014/15.

1 April 2016 - [Pharmacy regulation at work in Australia, 2014/15](#) - The Pharmacy Board of Australia (the Board) has released its report for 2014/15

29 March 2016 - [Communiqué from the Board](#) - The Occupational Therapy Board of Australia releases its latest communiqué.

29 March 2016 - [Communiqué from the Board](#) - The Optometry Board of Australia releases its latest communiqué.

Australia. National Health & Medical Research Council (NHMRC)

1 April 2016 - [NHMRC Research Tracker](#)

Australia. Therapeutic Goods Administration (TGA)

6 April 2016 - [Stem cell treatments and regulation - a quick guide for consumers](#) - Commonly asked questions about stem cells and regulation.

6 April 2016 - [Medical Devices: how to stay included](#) - The post-market device workshops in Sydney on 19 May and 2 June 2016 have reached capacity; no further bookings available.

5 April 2016 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - Added Ibrutinib (Imbruvica).

5 April 2016 - [Reasons for scheduling delegate's interim decision and invitation for further comment for the ACMS meeting, April 2016](#) - Closing date 19 April 2016.

4 April 2016 - [Medicines Safety Update, Volume 7, Number 2, April 2016](#) - In this issue: updating medicine ingredient names; Xgeva and osteonecrosis of the jaw; erlotinib - change in indication; ibrutinib and hepatotoxicity.

1 April 2016 - [Consultation forecast](#) - 3 updates: Biovigilance guidelines, Regulation of autologous cell and tissue therapies, Variations to biologicals.

1 April 2016 - [Super Bull 6000 Herbal capsules](#) - Safety advisory.

31 March 2016 - [Vigorexx tablets](#) - Safety advisory.

31 March 2016 - [ACSS public statement, 30-31 October 2015](#) - Public Statement for the ACSS Generics Working Group face to face meetings, Seoul, South Korea, 30-31 Oct 2015.

Australian Commission on Safety and Quality in Health Care

On the Radar – 4 April 2016 – Issue 267 ([PDF 100KB](#)) ([Word 139KB](#))

Australian Capital Territory. Health Directorate

5 April 2016 - [Deaf and hearing impaired residents to receive free specialised smoke alarms](#) - Specialised smoke alarms will be installed for free in the homes of deaf and hearing impaired Canberrans, Minister for Police and Emergency Services Simon Corbell announced today.

4 April 2016 - [New bulk-billed community health clinic opens in Macquarie](#) - Residents of Belconnen will have access to more bulk-billed health services with the new National Health Co-op general practice officially opened in Macquarie by Minister for Health Simon Corbell today. Mr Corbell said the new health clinic in Macquarie was the latest to be opened for the expanding National Health Co-op in Canberra and will continue to ensure the community can access quality health services.

1 April 2016 - [Have your say on the Aboriginal and Torres Strait Islander Health Plan 2016-2020 - Priorities for the next Five Years](#) - The ACT Government is seeking community feedback on the Aboriginal and Torres Strait Islander Health Plan 2016-2020, which is open for consultation from 1 April to 13 May 2016.

New South Wales. Ministry of Health

Media Releases

6 April 2016 - [NSW Health issues measles warning](#) - NSW Health is warning the public to be alert to the symptoms of measles after four people were reported to have been in the community while infectious with the highly contagious disease in the past two weeks.

5 April 2016 - [St Vincent's Hospital Interim Report](#) - The interim report of an inquiry into chemotherapy dosing at St Vincent's Hospital has been made public.

4 April 2016 - [\\$187 million South East Regional Hospital officially opened](#) - Minister for Rural Health Fiona Nash and NSW Health Minister Jillian Skinner today visited the South East Regional Hospital at Bega to officially open the newly-constructed facility.

Policy Directives & Guidelines

6 April 2016 - [Salary Packaging Policy and Procedure Manual](#)

Information Bulletins

6 April 2016 - [NSW Hospital Peer Groups 2016](#)

5 April 2016 - [Public Health Act 2010 - Notification of Fees](#)

1 April 2016 - [Changes to Section 100 co-payments in NSW](#)

Queensland. Department of Health

4 April 2016 - [Morven's new director of nursing brings vast experience to her role](#) - Morven Community Clinic's new Director of Nursing Desley French brings vast nursing experience in Africa and rural and remote Queensland to her new role in the South West

South Australia. Department for Health & Ageing

6 April 2016 - [Inaugural Public Health Awards announced](#) - The Minister for Health's Excellence in Public Health Award winners have been announced, recognising councils for their outstanding achievements in public health.

6 April 2016 - [Flinders Medical Centre celebrates 40 years](#) - Flinders Medical Centre (FMC) – which created history as Australia's first medical school and public hospital built as a single institution – is today celebrating its 40th birthday.

5 April 2016 - [Major default notice issued on New RAH build](#) - The State has issued a Major Default Notice against the consortium responsible for delivering the new Royal Adelaide Hospital after the agreed date for Technical Completion (4 April) passed.

4 April 2016 - [Australia's first Public Health Week](#) - Australia's first ever Public Health Week kicks off today, reminding us how public health services work behind the scenes to keep us safe and well.

3 April 2016 - [Head of SA Pathology sacked](#) - Chief Executive, SA Health David Swan said that he first knew yesterday that a number of patients had received incorrect pathology test results.

Tasmania. Department of Health & Human Services

5 April 2016 - [Urgent action to address Emergency Dept issues](#) - The Hodgman Liberal Government will implement a range of actions to ensure patients can get more timely care in emergency departments at the Royal Hobart Hospital and the Launceston General Hospital.

Victoria. Department of Health

7 April 2016 - **Mandatory Kilojoule Labelling For Healthy Food Choices** - In a Victorian first, the Andrews Labor Government will implement a mandatory kilojoule labelling scheme, with new laws to be introduced requiring "fast food" outlets to display kilojoule contents on their menus. The new laws will require large chain food outlets and large supermarkets to display the kilojoule content of food and drinks on menus.

6 April 2016 - **Labor Government Giving Mental Health Patients On The Mornington Peninsula The Best Care** - The Andrews Labor Government is providing more funding to give Mornington Peninsula and Frankston locals with mental illness and their families the best care and treatment facilities. Minister for Mental Health Martin Foley today announced a \$1.5 million upgrade of the Peninsula Health Adult Mental Health Inpatient Service.

4 April 2016 - **BreastScreen Victoria Opens Milestone Clinic In Sunbury** - Women in Sunbury and surrounding areas will now have better access to lifesaving breast cancer screening with the launch of BreastScreen Victoria's 40th fixed clinic. Minister for Health, Jill Hennessy, today joined Member for Sunbury, Josh Bull, to celebrate this historic milestone for BreastScreen Victoria.

Western Australia. Department of Health

Media Releases

5 April 2016 - **Teenagers 'Get the Facts' in sexual health and relationship quiz** - WA Health has launched a new quiz on its Get the Facts website for young people.

5 April 2016 - **New children's hospital opens doors to staff** - A program of daily tours is giving Princess Margaret Hospital (PMH) staff and volunteers a unique opportunity to visit Perth Children's Hospital (PCH) before the completion of the construction phase.

5 April 2016 - **WA Health tops the charts on Noongar Radio** - Health Matters, on radio 100.9fm, airs fortnightly from 11am to noon on Wednesdays and repeated on Sunday nights, is a segment that tackles contemporary health issues for Aboriginal people.

1 April 2016 - **Minister for Health and Minister for Regional Development: Albany Community Hospice officially opened** - Albany and surrounding areas can now meet increasing demand for palliative care with a new hospice officially opened today by Regional Development Minister Terry Redman.

Operational Directives

6 April 2016 - **Administration of Fluoride Varnish by Non-Dental Practitioners** - The Operational Directive for Administration of Fluoride Varnish by Non-Dental Practitioners aligns with the Poisons Act 1964 and the Poisons Regulations 1965, and intends to provide guidance on the authority scope of non-registered dental practitioners with the handling of fluoride in the context of the Fluoride Varnish Program.

New Zealand. Ministry of Health

7 April 2016 - **Research Report: The New Zealand Drug Harm Index 2016** - The New Zealand Drug Harm Index 2016 estimates the social cost of drug-related harms and intervention costs in 2014/15 as NZ\$1.8 billion.

5 April 2016 - **Report on the Performance of General Practices in Whānau Ora Collectives as at September 2015** - This report focuses on the performance of general practices in Whānau Ora collectives – using results from the software package HealthStat, which collects an anonymous summary of patient health information from general practices in Whānau Ora collectives.

4 April 2016 - **Preventing suicide: Guidance for emergency departments** This guidance is aimed at improving the quality of care for people presenting to emergency departments at risk of suicide. The guidance includes clinical risk assessment and referral pathways, but also focuses on the nature of interactions between the person and clinicians involved in their care. This focus incorporates advice on culturally and age-appropriate interventions.

United Kingdom. Department of Health

1 April 2016 - [Multi-agency guidelines on female genital mutilation](#) - This multi-agency guidance on female genital mutilation (FGM) should be read and followed by all persons and bodies in England and Wales who are under statutory duties to safeguard and promote the welfare of children and vulnerable adults.

British Medical Association

1 April 2016 - [Soft opt-out boosts organ donation in Wales](#) - Fifteen people have donated their organs in the first two months after a new soft opt-out system for organ donation was introduced in Wales, new figures show.

ABOUT US

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Mark's focus is on public liability and professional indemnity insurance and associated litigation. He has particular experience with medical negligence claims and the complex insurance and indemnity arrangements prevalent in the resources, mining, building and construction industries.

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