

HEALTH ALERT

30 JUNE 2014

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JUDGMENTS

Commonwealth

20 June 2014 - [*Hunter and New England Local Health District v McKenna; Hunter and New England Local Health District v Simon and Anor* \[2014\] HCTrans 137](#)

This was a special leave application by the Hunter and New England Local Health District to the High Court of Australia from a decision of the New South Wales (NSW) Court of Appeal.

The case involved the compulsory detention of a patient under the *Mental Health Act 1990* (NSW). After a psychiatrist working at the hospital assessed the patient, he was discharged into the custody of a friend so they could travel back to Victoria where the patient's mother lived. When they stopped on the side of the highway, the patient strangled and killed his friend. The late friend's mother and sisters claimed damages for psychiatric injury resulting from nervous shock. The primary judge concluded the plaintiffs had not established negligence. The Court of Appeal overturned the primary judge's findings, determining the plaintiffs had established negligence which was causally related to their injuries.

The issue during the special leave application was the application of the statutory defence of competent professional practice to a claim of negligence and the inconsistency between the obligations under the *Mental Health Act* and common law duty of care.

Special leave was granted subject to the notice of appeal being amended to include more specifically an appeal point relating to the intersection between the common law and the *Mental Health Act* and on the condition that the hospital undertake to pay the costs of the appeal in any event and not seek to disturb the costs made in favour of the plaintiff in the Courts below.

26 June 2014 - [*Wong v Sklavos* \[2014\] FCA 679](#)

Practice and procedure – appeals – application for leave to appeal from an interlocutory judgment – application by non-party – subpoenas to produce documents issued to non-parties – subpoenas sought tax returns and income information for dermatology practices – application to set aside the subpoenas dismissed – whether “apparent relevance” established – whether primary judge’s decision attended by sufficient doubt – whether substantial injustice. Practice and procedure – subpoenas – where information confidential.

Victoria

20 June 2014 - [*O'Connell v Barnett* \[2014\] VSCA 125](#)

This was an appeal to the Victorian Court of Appeal from a judgment of the Supreme Court of Victoria. The appellant was the former patient of the respondent who was a cosmetic surgeon. The appellant alleged that the surgeon had either breached an agreement between them or was negligent in performing a procedure which left her with a scar from hip to hip. The primary judge dismissed the claim and did not accept the appellant's testimony, finding her to be a disingenuous, unreliable and deceptive witness.

The appellant appealed on the basis that the trial was unfair because of the procedure which was adopted by the trial judge during her evidence in chief and because the judge had refused to tender a letter written by the surgeon to a disciplinary tribunal. Because the appellant had been self-represented at trial, the trial judge had taken her through her evidence, referencing the surgeon's pre-surgery consultation notes. The appellant argued that this amounted to a cross-examination.

The Court of Appeal dismissed the appeal, as it was of the opinion that the trial judge had asked questions and sought clarification in order to assist the appellant in explaining her case and the refusal to allow the letter to be put in to evidence was likely because he thought it would overall work to her disadvantage. Therefore, the appellant was not deprived of the ability to put forward her case in a proper way or of a fair trial.

New South Wales

23 June 2014 - [*Health Services Pty Ltd v Commissioner of State Revenue* \[2014\] NSWCATAD 83](#)

Taxes and duties - Payroll tax - Employment agency contracts - Whether taxpayer procured the services of workers for clients - Whether contracts were employment agency contracts when worker in a common law employer/employee relationship - Whether Division 8 in Part 3 of *Payroll Tax Act 2007* constitutes an exclusive regime to determine liability under an employment agency contract.

Queensland

20 June 2014 - [Chinese Medicine Board of Australia v Jeon Lee \[2014\] QCA 149](#)

Procedure – Inferior courts – Queensland – Queensland Civil and Administrative Tribunal – where the Chinese Medicine Board (the Board) appeals the decision of the Queensland Civil and Administrative Tribunal (QCAT) overturning the decision of the Board to refuse the respondent's application for registration as a Chinese Medicine practitioner (Acupuncture division) – where the respondent was a graduate of The Australian College of Eastern Medicine (ACEM) – where the Board had previously granted registration to ACEM graduates – where the Board subsequently determined the ACEM course did not meet the *Health Practitioner Regulation National Law Act 2009* (Qld) (National Law) requirements – where the appellant contends that the learned primary judge erred in construction and application of ss 52, 53 and 83 of the National Law – where the appellant contends that the learned primary judge erred in taking into account the Board's prior registration of ACEM graduates – whether the learned primary judge so erred.

LEGISLATION

Commonwealth

24 June 2014 - [Continence Aids Payment Scheme Variation 2014 \(No. 1\)](#) F2014L00826.

[Continence Aids Payment Scheme Variation 2014 \(No. 2\)](#) F2014L00833 • as made • 24/06/2014

22 June 2014 - [Declared Hearing Services Amendment Determination 2014 \(No. 2\)](#) F2014L00827.

22 June 2014 - [Hearing Services \(Eligible Persons\) Amendment Determination 2014 \(No. 1\)](#) F2014L00821.

23 June 2014 - [National Disability Insurance Scheme \(Host Jurisdiction\) Amendment Specification 2014](#) F2014L00807.

19 June 2014 - [Private Health Insurance \(Benefit Requirements\) Amendment Rules 2014 \(No. 2\)](#) F2014L00801.

11 June 2014 - [Commonwealth price \(Pharmaceutical benefits supplied by approved pharmacists\) Amendment Determination 2014 \(No 1\)](#) F2014L00795 • PB 44 of 2014.

19 June 2014 - [Private Health Insurance \(Complying Product\) Amendment Rules 2014 \(No. 5\)](#) F2014L00797.

Aged Care Act Instruments: <http://www.comlaw.gov.au/Series/C2004A05206/Enables>

REPORTS

Australia. Department of Health & Ageing

Media releases

26 June 2014 - ["Pay for quality" initiative](#). Health Minister Peter Dutton congratulated private hospital operator Healthscope and health insurer BUPA on their "Pay for Quality" initiative.

25 June 2014 - [Government funds national strategy to target fetal alcohol spectrum disorders](#). The Australian Government will provide \$9.2 million to the National Fetal Alcohol Spectrum Disorders (FASD) Action Plan to address the harmful impact of FASD on children and families.

24 June 2014 - [Another step towards Indigenous health equality](#). The Australian Government is taking another important step towards securing health equality for Aboriginal and Torres Strait Islander people.

Private Health insurance (PHI) Circulars

26 June 2014 - [PHI 39/14 Changes to the Private Health Insurance \(Benefit Requirements\) Rules 2011](#).

26 June 2014 - [PHI 38/14 Changes to second tier eligible hospitals](#).

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

27 June 2014 - The pharmacy Board of Australia releases its latest communiqué. | [Read Article](#)

24 June 2014 - Health ministers announced the new and reappointed Chair and Board members of the medical radiation practice Board of Australia last week. [Read Article](#)

24 June 2014 - Health ministers announced the new and reappointed Chair and Board members of the occupational therapy Board of Australia last week. [Read Article](#)

23 June 2014 - AHPRA welcomes the new and reappointed Board members that were announced by the Australian Health Workforce Ministerial Council (the Ministerial Council) last week. [Read Article](#)

23 June 2014 - The national Board has published its May communiqué. [Read Article](#)

23 June 2014 - The optometry Board of Australia releases its latest communiqué. [Read Article](#)

22 May 2014 - The medical Board of Australia releases its latest newsletter. [Read Article](#)

Australia. National Health & Medical Research Council

20 June 2014 - [Implementing the Federal Government's dementia research boost](#).

Australia. Therapeutic Goods Administration (TGA)

27 June 2014 - [Registered and listed medicines](#). Updated YouTube video with sound.

26 June 2014 - [Uniform recall procedure for therapeutic goods \(URPTG\)](#) Updated information to version 1.5.

25 June 2014 - [Summary of submissions and TGA responses to the "Permitted \(coded\) indications for listed medicines" consultation](#). Broad issues raised in submissions and the TGA's response and proposed approach pending progression of legislative amendments.

24 June 2014 - [The role of the TGA](#) Updated YouTube video with sound.

24 June 2014 - [Benefits versus risks approach to regulating therapeutic goods](#). Updated YouTube video with sound.

24 June 2014 - [eCTD submission update](#). The TGA has been working with stakeholders to prepare for a pilot electronic applications submission programme for registered medicines.

24 June 2014 - [Medical devices and IVDs compliance actions](#). Details of products cancelled from the ARTG.

23 June 2014 - [Ivabradine \(Coralan\) and cardiovascular events in patients with angina](#). The TGA is reviewing new information regarding ivabradine (Coralan) identified in the preliminary results of a study into the medicine.

23 June 2014 - [Advisory Committee on Complementary Medicines \(ACCM\) meeting statement, Meeting 16, 6 June 2014](#). Advisory committee on complementary medicine meeting statement.

23 June 2014 - [Listing notices](#) Added link to Therapeutic Goods (Listing) Notice 2014 (No. 1).

20 June 2014 - [Required Advisory Statements for Medicine Labels \(RASML\)](#). To allow for a transition period for sponsors to comply with the updated requirements, the Specification includes two versions of the RASML.

20 June 2014 - [Australian public assessment reports for prescription medicines \(AusPARs\)](#) Brentuximab vedotin, Turoctocog alfa (rch), Denosumab, Dolutegravir (as sodium), Fentanyl (as citrate), Golimumab (rmc), Olodaterol (as hydrochloride).

Australian Institute of Health & Welfare

26 June 2014 - [Indigenous Australians more likely to die from coronary heart disease and chronic obstructive pulmonary disease, but some positive trends emerging.](#)

25 June 2014 - [Good health, bad health habits—at a cost.](#)

24 June 2014 - [People using both disability services and home and community care in 2010-11 | technical report.](#)

23 June 2014 - [Bowel cancer screening saves lives—but participation slightly lower than previous year.](#)

Australian Commission on Safety and Quality in Health Care

26 June 2014 - [Building upon a shared commitment to quality healthcare \(Healthscope and Bupa\).](#) Healthscope and Bupa have built upon their shared commitment to further improve quality in the private healthcare sector with the launch of the Pay for Quality initiative. Shifting focus from cost to value-for-money, Pay for Quality provides a funding platform whereby Bupa rewards Healthscope for providing better healthcare outcomes in clinical quality and safety.

23 June 2014 - On the Radar – Issue 179 ([PDF 268KB](#)) ([Word 290KB](#)).

Australian Capital Territory. Health Directorate

25 June 2014 - [Asbestos taskforce to lead government response on loose-fill asbestos.](#)

New South Wales. Ministry of Health

Media Releases

27 June 2014 - [Main works begin on-site at \\$80 million Lismore hospital redevelopment.](#)

26 June 2014 - [Community celebrates official opening of Concord center for palliative care.](#)

24 June 2014 - [Local hospitals to benefit from \\$3.3 million boost for new electric beds.](#)

Policy Directives & Guidelines

26 June 2014 - [Lifetime Care and Support Scheme \(LTCS Scheme\) - Charging policy and rates for designated units](#) PD2014_019.

25 June 2014 - [Brain Injury Rehabilitation Program \(BIRP\) - Fees policy and schedule of fees](#) PD2014_018.

23 June 2014 - [NSW Newborn and Paediatric Emergency Transport Services \(NETS\) charges](#) PD2014_017.

Northern Territory. Department of Health

26 June 2014 - [Six month review of the Alcohol Mandatory Treatment Act.](#)

20 June 2014 - [Hydrotherapy pool boosting the wellbeing of young centralians with a disability.](#)

Queensland. Department of Health

24 June 2014 - [Funding for more Cochlear implants, as 10,000th recipient is switched on.](#) The Queensland Government will clear the public waiting list for Cochlear implant patients with the 10,000th person receiving the life-changing device in Brisbane today.

24 June 2014 - [Stafford Clinic delivers better dental care.](#) Dentists, therapists and staff at the Stafford dental clinic have been praised for slashing waiting times for patients by Health Minister Lawrence Springborg.

23 June 2014 - [Government delivers more power for local health boards.](#) The success of local Boards in directing improved health care across Queensland has prompted the State Government to devolve more power to local communities starting next month.

22 June 2014 - [Paramedics to deliver clot busting drugs to heart attack victims](#). Heart attack patients around Queensland will have a better chance of surviving and recovering more quickly as part of an expanded trial for paramedics to administer clot-busting drugs.

South Australia. Department of Health & Ageing

25 June 2014 - New state wide eating disorder service A new \$1.2 million service aimed at assessing, treating and supporting South Australians with eating disorders was launched today. [Read Article](#)

Tasmania. Department of Health & Human Services

25 June 2014 - [Indoor gas poisoning health warning issued](#).

Victoria. Department of Health

26 June 2014 - [Sign up for Ambulance Victoria membership today](#). Ambulance Victoria will waive the normal 60-day waiting period for non-emergency transports or emergency call-outs for pre-existing medical conditions for three months to coincide with a campaign to encourage Victorians to take out membership, Minister for Health David Davis said today.

26 June 2014 - [Victorian Coalition Government invests in 92 mental health nurse scholarships](#). The Victorian Coalition Government has delivered 92 scholarships for mental health nurses to undertake further study and training, Minister for Mental Health, Mary Wooldridge announced today.

24 June 2014 - [Bill Clinton and Sir Bob Geldof to headline at AIDS 2014](#). Minister for Health David Davis has welcomed the news that former US President Bill Clinton and musician and campaigner Sir Bob Geldof will be prominent speakers at AIDS 2014 in Melbourne next month.

24 June 2014 - [New private hospital for Melbourne's biggest employment precinct](#). Development of a new 112-bed private hospital and 80-bed aged care facility in the East Werribee Employment Precinct will significantly improve the delivery of health services in one of Australia's fastest growing areas, Minister for Planning Matthew Guy and Minister for Health David Davis said today.

21 June 2014 - [Hospitals take a hands-on approach to infection](#). Victoria's public hospitals are performing well above the national benchmark in minimising the spread of bugs and other infections to patients, Minister for Health David Davis said today.

Western Australia. Department of Health

Media Releases

[Read Healthview Winter 2014 \(PDF 6.37MB\)](#).

Operational Directives (OD)

26 June 2014 - [IC 0191/14](#) Department of Health Medical Practitioners (WA Country Health Service) AMA Industrial Agreement 2013 Notification that the Department of Health Medical Practitioners (WA Country Health Service) AMA Industrial Agreement 2013 (the Agreement) was registered by the Western Australian Industrial Relations Commission on 27 February 2014.

25 June 2014 - [OD 0532/14](#) Hospital Fees and Charges 2014-15. This directive informs all WA public hospitals and health services of the amended schedule of hospital fees and charges 2014-15, as approved by Executive Council on 10 June 2014 and gazetted on 13 June 2014 and which will be operationally effective from Tuesday, 1 July 2014.

New Zealand. Ministry of Health

26 June 2014 - ['Ala Mo'ui: Pathways to Pacific Health and Wellbeing 2014–2018](#).

United Kingdom. (United Kingdom) Department of Health

26 June 2014 - [National Health Scheme \(NHS\) pension scheme changes](#).

26 June 2014 - [How standardised tobacco packaging would work in practice](#).

26 June 2014 - [Protecting personal health and care data](#).

26 June 2014 - [Jimmy Savile NHS investigations published](#).

26 June 2014 - [Jimmy Savile NHS investigations](#).

26 June 2014 - [NHS Jimmy Savile investigation: assurance report](#).

26 June 2014 - [NHS and Department of Health investigations into Jimmy Savile](#).

26 June 2014 - [Jimmy Savile investigation: Broadmoor hospital](#).

26 June 2014 - [New approach to care for the dying published](#).

26 June 2014 - [Liverpool Care Pathway review: response to recommendations](#).

26 June 2014 - [Standardised packaging of tobacco products](#).

26 June 2014 - [DH non-executive appointments](#).

26 June 2014 - [Update to charging arrangements for adult social care services](#).

26 June 2014 - [Standardised packaging of tobacco products: draft regulations](#).

25 June 2014 - [Resources to support whooping cough vaccination](#).

25 June 2014 - [Social work bursary information packs](#).

24 June 2014 - [NHS rated on open and honest reporting culture in world leading transparency drive](#).

24 June 2014 - [Campaign to end early and forced marriage and female genital mutilation](#).

23 June 2014 - [European Antibiotic Awareness Day evaluation 2013](#) Part of a collection: [European Antibiotic Awareness Day: 2014 Resources](#).

23 June 2014 - [UK AMR strategy: measuring success](#) Part of a collection: [Antimicrobial Resistance \(AMR\): information and resources](#).

23 June 2014 - [General Medical Council: annual accountability hearing](#).

23 June 2014 - [Progress on the UK antimicrobial resistance strategy](#) Part of a collection: [Antimicrobial Resistance \(AMR\): information and resources](#).

23 June 2014 - [Children, families and maternity e-bulletin](#).

20 June 2014 - [NHS procurement and efficiency Board: new chair](#).

20 June 2014 - [Antimicrobial Resistance \(AMR\): information and resources](#).

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

26 June 2014 - [HHS announces auto-enrollment plans for current marketplace consumers for 2015](#).

23 June 2014 - [\\$800,000 Health insurance portability and accountability settlement in medical records dumping case](#).

Australian Medical Association (AuMA)

26 June 2014 - [AuMA Transcript - AuMA President, A/Prof Brian Owler, 666 ABC Canberra](#) Transcript: AMA President, A/Prof Brian Owler, 666 ABC Canberra, 26 June 2014. [Read Article](#)

25 June 2014 - [AuMA Transcript - AuMA President, A/Prof Brian Owler, Parliament House Doorstop](#). [Read more](#)

25 June 2014 - [Action needed to protect kids from alcohol ads](#). Media release action needed to protect kids from alcohol ads. [Read Article](#)

24 June 2014 - [Dr Meriam Ibrahim freed - reports](#). The AuMA welcomes reports that Sudanese doctor, Dr Meriam Ibrahim, has had her death penalty sentence overturned by an appeals court in Sudan and she has been freed from prison. [Read Article](#)

British Medical Association (BMA)

26 June 2014 - [Call to ban e-cigarettes in public places](#).

25 June 2014 - [Patients' medical data sacrosanct, declares BMA.](#)

24 June 2014 - [Doctors back cigarette ban to those born after 2000.](#)

24 June 2014 - [Action urged as workload drives doctors to drug abuse and divorce.](#)

23 June 2014 - [Denying men genital warts vaccine 'sexist'.](#)

Canadian Medical Association

20 June 2014 - [Canada ranks second last in comparison of health systems.](#) Health Canada is seeking input from Canadian physicians and members of the public on the current approach to notifications about drug shortages...

American Medical Association

25 June 2014 - [Court: Physician not liable for patient's risky behaviour.](#) A decision this month by a state supreme court overturned a lower court ruling that discounted a patient's unsafe behaviour from a medical liability determination.

ABOUT US

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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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