



HEALTH ALERT

3 MARCH 2014

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JUDGMENTS

Commonwealth

14 February 2014 - [Paul v Cooke \[2014\] HCATrans 25](#)

Three years after Dr Cooke negligently failed to diagnose Ms Paul's intracranial aneurysm, she underwent a "coiling" operation where, through no fault of the surgeons, the aneurysm ruptured and she suffered injury.

There was no physical change in the aneurysm, despite the delay, and, although the preferred procedure had changed, the overall risk of rupture had not. Ms Paul argued she was exposed to risks she would likely not have been otherwise, as she would have undergone a different procedure had the delay not occurred.

The primary judge found that under s 5D(1)(b) of the *Civil Liability Act 2002* (NSW) the scope of Dr Cooke's liability did not extend to Ms Paul's injuries. The Court of Appeal agreed, determining his negligence did not create the risk of intra-operative rupture and the harm suffered was not a consequence of it.

Ms Paul sought special leave to appeal to the High Court, arguing the primary judge gave an unduly narrow construction to the duty to diagnose which did "not accord with the practice of medicine...or the primary importance of diagnosis to the doctor/patient relationship." She also argued it was wrong to compare the risk at the two points in time, as the delay changed the circumstances of the treatment.

It was submitted that this case was of national importance, as the legislation in question is replicated throughout the country.

The High Court dismissed the application, agreeing with the courts below that there was no obvious connection between the failure to diagnose and the risk coming to pass.

24 February 2014 - [Nicholl Holdings Pty Ltd v Minister for Health \[2014\] FCCA 295](#)

Administrative law – Judicial review – decision of Assistant Director, workforce regulation section – whether court has jurisdiction to hear application – whether the application is incompetent. Administrative law – Judicial review – whether decision is of an "administrative character made under an enactment" – whether decision of an administrative or legislative character – conduct engaged in to make decision – *Administrative Decisions (Judicial Review) Act 1977* (Cth) – *Health Insurance Act 1973* (Cth).

Queensland

31 January 2014 - [Webb v Sunshine Coast Hospital and Health Service & Anor \[2014\] QCAT 40](#)

The applicant pharmacist was employed by the respondents. She was suspended on full pay from 31 December 2012, but underwent a medical examination in February 2013 and was considered fit to return to work. The applicant wanted to return to her position, but her suspension had not been lifted. In May 2013 she lodged an anti-discrimination complaint against her employer.

In December 2013 the respondent notified the applicant it had appointed a consultant to conduct an organisational wellness assessment on the pharmacy team with the objective of providing advice on the validity of her returning to the team and if viable, to provide advice in relation to options for this occur. The applicant sought an injunction to prevent the assessment until her complaint was finalised. The applicant alleged the assessment would have "dire effects on her return to work prospects," was designed to result in her termination and would restrict the range of relief available in her complaint.

The applicant submitted that a finding that she ought not return to her role was likely to prejudice her complaint. The respondent submitted the injunction was premature because the outcome of the assessment was unknown. The Tribunal found the assessment was not a process to terminate the applicant's employment and that rather than restricting the available orders, would enhance the options by providing evidence either in support of, or against, her re-installment.

The Tribunal dismissed the application, finding that preventing the assessment was not necessary to protect the applicant's position prior to the finalisation of her complaint.

22 January 2014 - [National Heart Foundation of Australia \[2014\] QCAT 39](#)

Discrimination – general exemption from liability sought on the attribute of race – where specific exemption already exists – where general exemption is not required.

Australian Capital Territory

24 February 2014 - [Kaye v Dr Woods and John James Memorial Foundation Ltd \[2014\] ACTSC 25](#)

Practice and procedure - pleadings – amendments – application by plaintiff to amend Statement of Claim five years after proceedings were commenced – action for damages for medical negligence – whether expert report provide evidentiary basis for proposed amendments – trial date previously vacated – limited amendments allowed – not appropriate to grant leave where amendments raise substantial new issues likely to further delay the case.

New South Wales (NSW)

17 February 2014 - [Lane v Northern NSW Local Health District \[2014\] NSWCA 26](#)

Practice and procedure - appeal - application to adduce further evidence - leave not required where complaint is erroneous rejection of proffered evidence at trial - request for issue of subpoena rejected where appeal challenges the setting aside of subpoena before trial.

24 February 2014 - [Lane v Northern NSW Local Health District \(No 2\) \[2014\] NSWCA](#)

Practice and procedure - interlocutory application - vacation of hearing date - whether need to amend notice of appeal - unavailability of applicants' support person - whether need to take further steps to establish the competency of the appeal - consequence of late application practice and procedure - interlocutory application - application for referral for pro bono legal assistance - applicants lacking means to obtain legal assistance - attempts to obtain legal aid - proceedings largely turning on factual issues - consequence of late application - *Uniform Civil Procedure Rules 2005* (NSW), r 7.36.

27 February 2014 - [Borg v Ramsay Health Care \(No 2\) \[2014\] NSWSC](#)

Costs- offer of compromise - time of offer - whether information available at time of offer made it unreasonable for the plaintiff to refuse offer - plaintiff's ignorance of existence of video surveillance filmed of his activities before offer - whether service of medical report sufficient to disclose basis of defendants' case at trial - where adverse view of plaintiff's credibility is formed after offer is rejected - where defendants rely on uncontentious and well known legal principles at trial after offer is rejected - whether appropriate that matter be heard in Supreme Court.

27 February 2014 - [Hayer v Kam & Ors \[2014\] NSWSC 126](#)

Practice and procedure - claim in tort arising from death of patient in a hospital - claims in negligence and for intentional torts against medical practitioners and hospital staff - application to strike out intentional tort claims - whether s3B(1)(a) of the *Civil Liability Act 2002* applied to intentional tort claims - strike out application refused - costs.

24 February 2014 - [Health Care Complaints Commission v Ingram \[2014\] NSWCATOD](#)

Registration as a Nurse - General on the national register of health practitioners maintained by the Australian Health Practitioner Regulation Agency ("the Register") cancelled under s149C(1)(a) and (b) of the *Health Practitioner Regulation National law*.

3 February 2014 - [Health Care Complaints Commission v Dr Baez \[2014\] NSWCATOD 3](#)

Sexual misconduct; professional misconduct.

21 February 2014 - [Porter v Le; Porter v Western Sydney Local Health District \[2014\] NSWSC 101](#)

Procedure - medical negligence - representation by tutor of legally incapacitated person - application for stay pending removal of tutor - *Uniform Civil Procedure Rules 2005* 7.18 - impecunious tutor - whether tutor's financial status a prerequisite for office - distinction between responsibility for costs and financial capacity to meet adverse costs order.

CORRECTION NOTICE

In the Health Alert dated 17 February 2014, the case summary of *Prince v Malouf* [2014] NSWCA 12 incorrectly reported that Dr Prince's letter to UMP was actuated by malice. This was inaccurate. The Court of Appeal upheld the trial judge's finding that Dr Malouf had failed to establish that Dr Prince's actions were motivated by malice. We apologise for the error in reporting.

Victoria

14 February 2014 - *Medical Board of Australia v O'Toole* [2014] VCAT 143

Health Professions Registration Act 2005 section 169; *Medical Practice Act 1994*; s3(a)(b) and (c) unprofessional conduct of a serious nature. Excessive and inappropriate prescription of IM Morphine to a drug-dependant person for self-administration; failure to provide adequate care; failure to have/record a treatment plan; failure to evaluate treatment.

7 February 2014 - *Medical Board of Australia v Perry* [2014] VCAT 107

Health Professions Registration Act 2005, whether context relationship evidence of assistance in deciding whether the Board's case has been made out, whether preponderance of evidence supports a finding of professional misconduct applying the Briginshaw principles.

21 January 2014 - *Dental Board of Australia v Zehtab-Jardid* [2014] VCAT 80

The respondent is a dentist and has a small practice in Bentleigh.

24 February 2014 - *Inquest into the death of baby Jacob Hill 2008/595*

Death as a result of complications of intrauterine hypoxia.

Western Australia

25 February 2014 - *Agapitos v Habibi* [2014] WASC 47

Claim for infringement of trade mark. Defendant has not used words as a trade mark - Defendant used sign in good faith - passing off - no evidence that significant section of the community identify plaintiff with the trade mark - no consumer deception or confusion - misleading or deceptive conduct - conduct not misleading or deceptive or likely to mislead or deceive - counterclaim - application for cancellation of plaintiff's trade mark - trade mark not inherently adapted to distinguish services - trade mark not capable of distinguishing plaintiff's services - registration of trade mark should be cancelled - counterclaim - application for cancellation of plaintiff's trade mark - use of trade mark not likely to deceive or cause confusion.

United Kingdom

20 February 2014 - *Leigh v London Ambulance Service National Health Service (NHS) Trust* [2014] EWHC 286 (QB)

Negligent delay in the attendance of an ambulance. Question whether causative link between the defendant's admitted negligence and the claimant's post traumatic stress disorder established.

LEGISLATION

17 February 2014 - *Private Health Insurance (Prostheses) Amendment Rules 2014 (No. 1)*.

19 February 2014 - *National Health (Listed drugs on F1 or F2) Amendment Determination 2014 (No. 1) (No. PB 15 of 2014)*.

20 February 2014 - *National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2014 (No. 2) - PB 11 of 2014*.

24 February 2014 - *National Health (Epworth Private Hospitals Paperless Prescribing and Claiming Trial) Special Arrangement 2014 - PB 16 of 2014*.

23 February 2014 - [National Health \(Efficient Funding of Chemotherapy\) Special Arrangement Amendment Instrument 2014 \(No. 2\) - PB 12 of 2014.](#)

25 February 2014 - [National Health \(Botulinum Toxin Program\) Special Arrangement Amendment Instrument 2014 \(No. 1\) - PB 13 of 2014.](#)

26 February 2014 - [Health Insurance \(General Medical Services Table\) Amendment \(Various Measures\) Regulation 2014.](#)

27 February 2014 - [Health Insurance \(Allied Health Services\) Amendment Determination 2014 \(No. 1\).](#)

REPORTS

Australia. Department of Health & Ageing

27 February 2014 - [Diabetes, Glaucoma, Cancer and Growth Hormone Patients Benefit From PBS Changes.](#) New medicines for glaucoma, diabetes and advanced soft tissue sarcoma have been approved for listing on the Pharmaceutical Benefits Scheme (PBS).

26 February 2014 - [Walk and Have the Chat That Saves Lives.](#) Thousands of Canberrans of all ages had the chat that saves lives as part of the annual Donate Life Walk around Lake Burley Griffin.

25 February 2014 - [Inspiring Smarter Brain Research in Australia.](#) Minister for Health Peter Dutton has launched a paper on the future of brain research in Australia.

20 February 2014 - [Government Support for Cancer Care.](#) The Australian Government is making significant improvements to ensure cancer patients are able to access quality chemotherapy treatment, when and where they need it.

Private Health insurance (PHI) Circulars

21 February 2014 - [PHI 13/14 Amendment to the Private Health Insurance \(Prostheses\) Rules 2014 \(No. 1\)](#)

Australia. Health Practitioner Regulation Agency and the boards

28 February 2014 - The Osteopathy Board of Australia releases its latest newsletter. [Read More.](#)

28 February 2014 - The Pharmacy Board of Australia releases its latest communiqué. [Read More](#)

27 February 2014 - Call for practitioner members from Tasmania for appointment to the Tasmanian Board of the Nursing and Midwifery Board of Australia. Call for practitioner members from Tasmania for appointment to the Tasmanian Board of the Nursing and Midwifery Board of Australia. [Read More.](#)

27 February 2014 - Call for community members from the Northern Territory for appointment to the Northern Territory Board of the Nursing and Midwifery Board of Australia. [Read More.](#)

27 February 2014 - National Board urges registrants to update their contact details to receive registration renewal reminders. [Read More.](#)

26 February 2014 - The Podiatry Board of Australia (the Board) invites Victoria podiatrists and podiatric surgeons to attend a breakfast forum in Melbourne in March. [Read More.](#)

25 February 2014 - Call for community members from the Northern Territory (NT) for appointment to the NT / South Australia (SA) / Western Australia (WA). Regional Board of the Psychology Board of Australia
Call for community members from the Northern Territory for appointment to the NT / SA / WA Regional Board of the Psychology Board of Australia. [Read More.](#)

25 February 2014 - Binational entry level qualifying statements. [Read More.](#)

25 February 2014 - Call for community members for appointment to the Northern Territory Board of the Medical Board of Australia. [Read More.](#)

24 February 2014 - The National Psychology Board has released its quarterly registration data. The data includes information about types of registration held, principal place of practice, endorsements, registrant age and gender. [Read More](#).

24 February 2014 - Call for nominations or expressions of interest for health practitioners to join the Osteopathy Board of Australia's list of approved persons for appointment to panels. [Read More](#).

24 February 2014 - Call for nominations or expressions of interest for health practitioners to join the Osteopathy Board of Australia's list of approved persons for appointment to panels. [Read More](#).

21 February 2014 - The Chinese Medicine Board of Australia releases its latest newsletter. [Read More](#).

20 February 2014 - The National Board has released its quarterly registration data. [Read More](#).

Australia. National Health & Medical Research Council (NHMRC)

24 February 2014 - [NHMRC Draft Information Paper: Evidence on Wind Farms and Human Health released for public comment](#).

Australia. Therapeutic Goods Administration (TGA)

27 February 2014 - [Consultations on adoption of European Union guidelines in Australia: Outcome of previous consultation](#). EU/ICH guidelines adopted by the TGA, effective 24 February 2014.

27 February 2014 - [Reasons for scheduling delegate's interim decision and invitation for further comment, February 2014](#). Interim decisions and reasons for scheduling decisions and invitation for further submissions. Closing date: 13 March 2014.

27 February 2014 - [Compositional guideline: Calcium L-threonate](#). Added to current compositional guideline page.

27 February 2014 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#). Added Alemtuzumab (rch) (Lemtrada, Remniq), Levonorgestrel (Jaydess) and Ruxolitinib (Jakavi).

26 February 2014 - [Electronic-only \(eCTD\) submissions milestone reached](#). The TGA has signed an agreement for the entry of prescription medicines and other therapeutic products on to the ARTG.

26 February 2014 - [TGA Industry Working Group \(IWG\)](#). Updated the IWG meeting outcomes information.

25 February 2014 - [Collagen Slim capsules](#) pose a serious risk to your health and should not be taken.

25 February 2014 - [Beautiful Slim Body capsules](#) pose a serious risk to your health and should not be taken.

24 February 2014 - [Report a medical device adverse event \(medical device user\)](#). Updated Medical device adverse event reporting form for use by medical device users, word and pdf version.

21 February 2014 - [Documents released under Section 11C of the Freedom of Information Act 1982](#).

21 February 2014 - [Cereform silicone gel-filled breast implants](#). The TGA has been advised that non-implanted Cereform silicone gel-filled breast implants have been recalled in France.

Australian Institute of Health & Welfare

25 February 2014 - [Health care expenditure on cardiovascular diseases 2008-09](#).

26 February 2014 - [Dental and oral health web pages](#).

27 February 2014 - [National breast cancer and cervical screening participation web pages](#).

28 February 2014 - [What works to improve education and employment outcomes for Indigenous Australians](#).

Australian Commission on Safety and Quality in Health Care

26 February 2014 - [Professor John Turnidge appointed to lead program for national surveillance of antimicrobial resistance and antibiotic usage](#). The Australian Commission on Safety and Quality in

Health Care (the Commission), today announced the appointment of Professor John Turnidge as a Senior Medical Advisor to lead work on a national surveillance program for antimicrobial resistance (AMR) and antibiotic usage (AU). Under the 2013/14 Australian Federal Budget, the Commission has been funded to coordinate national action to prevent and contain antimicrobial resistance through enhanced surveillance systems.

24 February 2014 - [On the Radar – Issue 163 \(107KB\)](#).

Australia. Private Health Insurance Administration Council

26 February 2014 - [The Operations of Private Health Insurers Annual Report 2012-13](#).

Australian Capital Territory (ACT). Health Directorate

21 February 2014 - [ACT Government moves to ban sugary drinks in government schools](#).

New South Wales. Ministry of Health

Media Releases

24 February 2014 - [Minister thanks volunteers for their tireless work and dedication](#).

26 February 2014 - [Getting on with the Job: \\$106 Million Wollongong Hospital Expansion Surges Ahead](#).

Information Bulletins

28 February 2014 - [Implementation of the Australian Health Service Safety and Quality Accreditation Scheme](#).

Northern Territory. Department of Health

20 February 2014 - [Adam Giles / Robyn Lambley - scoping study for bigger, better palmerston hospital](#). The Giles Government is delivering on its promise to build a second hospital for Greater Darwin by today revealing the first details of the Palmerston Regional Hospital.

Queensland. Department of Health

21 February 2014 - [TGA drug recall](#).

21 February 2014 - [LNP delivers on Redcliffe dental](#). The number of Redcliffe patients waiting for dental care was reduced by almost 70 percent between February and December 2013.

24 February 2014 - [The latest news from Lady Cilento Children's Hospital](#).

25 February 2014 - [AMAQ President signs new doctor contract](#). Dr Christian Rowan, President of the Australian Medical Association Queensland (AMAQ), has become one of the first doctors to agree to a new medical contract.

25 February 2014 - [Springborg braces for frontbench reshuffle](#). Health Minister, Lawrence Springborg, says he is braced for a frontbench reshuffle within the Labor Party that will see the Shadow Minister for Health replaced following the Redcliffe by-election.

Tasmania. Department of Health & Human Services

24 February 2014 - [DonateLife Week 2014](#)

Victoria. Department of Health

27 February 2014 - [Health assessment centre in Morwell expanded](#). The community health assessment centre, which opened in Morwell last week, has been expanded, Minister for Health David Davis announced today.

Western Australia (WA). Department of Health

Operational Directives (OD)

27 February 2014 - [OD 0505/14](#). Credentialing and defining scope of clinical practice for health professionals (Nursing and Midwifery) in WA health services – A policy handbook WA health has agreed to

support credentialing of eligible midwives and nurse practitioners into public health facilities. The policy is intended to apply to all nurse practitioners and eligible midwives working in the WA public health system and is to be used in conjunction with existing organisational policies.

27 February 2014 - [OD 0504/14](#). WA health leave management policy. The WA health leave management policy provides guidance to managers and employees on managing leave entitlements and includes additional management strategies and tools.

United Kingdom. Department of Health (DH)

27 February 2014 - [Medical innovation: doctors and patients encouraged to give views](#). Consultation aims to give doctors the confidence to try out innovative treatments.

27 February 2014 - Open Consultation. [Ill-treatment or wilful neglect in health and social care](#). Seeks views on the details of a new criminal offence of ill-treatment or wilful neglect of users of health and social care services.

27 February 2014 - [DH non-consolidated performance related pay 2012 to 2013](#) published 27 February 2014 Transparency data.

27 February 2014 - [Mitochondrial donation consultation launched](#).

27 February 2014 - [Social work education review](#).

United States of America. Department of Health & Human Services

21 February 2014 - [Next edition of electronic health record technology certification criteria issued](#).

26 February 2014 - [Departments of Justice and Health and Human Services announce record-breaking recoveries resulting from joint efforts to combat health care fraud](#).

Australian Medical Association (AuMA)

24 February 2014 - [‘Unprecedented’ exposure of children to alcohol marketing shows self-regulation has failed](#). The AuMA is calling for immediate action following the release today of a damning report by the Australian National Preventive Health Agency (ANPHA) showing young people are being exposed to unprecedented volumes of drinking ads. [Read more](#).

25 February 2014 - [Dr Hambleton, 891 ABC Adelaide](#). AuMA President Dr Steve Hambleton says patients may be disadvantaged if proposed Medicare changes are implemented. (Audio Clip).

26 February 2014 - [Legal advice brands Queensland contracts as draconian and inferior](#). Independent legal advice from prominent Queensland Barrister, Dan O’Gorman SC, confirms that proposed contracts for Senior Medical Officers (SMOs) being offered in Queensland are unfair and draconian. [Read more](#).

28 February 2014 - [AuMA Vice President Professor Dobb, ABC PM, Star rating food health website](#). Transcript: AuMA Vice President, Professor Geoffrey Dobb, ABC PM, 27 February 2014 Subject: Star rating food health website. [Read more](#).

British Medical Association (BMA)

26 February 2014 - [Patient trust threatened by data-sharing concerns](#). Concerns about patient data sharing need to be addressed or there will be a risk of irrevocable damage to the GP-patient relationship, the BMA told MPs.

25 February 2014 - [Public more aware of organ opt out, survey reveals](#). Awareness of Wales’s new opt-out organ donation law is on the increase, a new survey has revealed.

24 February 2014 - [Doctors leaders reassured over transatlantic healthcare market](#). The BMA has been given further assurances that a free-trade agreement between the European Union (EU) and the United States of America (USA) not affect healthcare in the United Kingdom (UK).

24 February 2014 - [Named GP role not too onerous, say doctors leaders](#). The BMA has issued guidance on how having a ‘named GP’ will work for patients aged 75 and above.

Canadian Medical Association (CMA)

21 February 2014 - [“A healthy life, a good death”: CMA’s end-of-life dialogue begins.](#)

25 February 2014 - [Summit tackles MD employment issues, seeks national response.](#)

27 February 2014 - [Nova Scotia FP nominated as CMA’s president-elect.](#)

American Medical Association (AMA)

26 February 2014 - [AMA Supports Creation of New GME Accreditation System, Praises Collaboration by Allopathic and Osteopathic Medical Communities.](#) The AMA fully supports the creation of one accreditation system for graduate medical education programs that will now include graduates of both allopathic and osteopathic medical schools.

24 February 2014 - [American Diabetes Association, YMCA of the USA and American Medical Association Release New Cost Estimate on Federal Savings of the Medicare Diabetes Prevention Act.](#) The American Diabetes Association and YMCA of the USA (Y-USA), in collaboration with the American Medical Association (AMA), released important new research today examining HR 962/S 452, the Medicare Diabetes Prevention Act (MDPA).

ABOUT US

Andrew Forbes



Andrew practices in litigation and administrative law with a particular focus on health. He is recognised for his expertise in health regulation.

Andrew has acted in Commissions of Inquiry and led investigations into health-related incidents, such as the Hendra virus outbreak. He has acted as "counsel assisting" in internal disciplinary hearings and inquiries.

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