



# HEALTH ALERT

23 May 2016

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## JUDGMENTS

### South Australia

19 May 2016 - *Inquest into the deaths of Robert Campbell and Jeremy Todd Williams* - The Inquests into the deaths of Mr Campbell and Mr Williams were conducted together as each of them had been detained by police pursuant to the South Australian Mental Health Act (**the Act**) and transported to the same hospital for after-hours medical treatment. Mr Campbell and Mr Williams were regarded as voluntary patients at the Hospital. For various reasons, neither of them were involuntarily detained for medical treatment under the Act. They each remained overnight and left the following morning. Mr Campbell and Mr Williams committed suicide shortly after their attendance at the hospital.

Mr Williams and Mr Campbell had histories of depression and self-harm. While attending the hospital, they were assessed by Emergency Department medical practitioners and mental health nurses. Neither of them were assessed by a psychiatric medical officer. The Coroner labelled this as "completely unacceptable", going on to say that the State's mental health system "is disjointed and lacks continuity of care". Some of the recommendations that were made are as follows.

Firstly, the Coroner recommended that mental health nurses, particularly those in Emergency Departments, should have mandatory ongoing training in respect of their powers and duties under the Mental Health Act. Secondly, that records relating to such training should be maintained centrally with the Chief Psychiatrist for monitoring purposes. Finally, that a junior doctor or mental health nurse should not discharge a suicidal patient, particularly one brought in by police under the Act, from an Emergency Department without having sought advice from a senior medical colleague.

### New South Wales

17 May 2016 - *Biggs v George [2016] NSWCA 113* - Ms George, a Macedonian-speaker with a poor grasp of English, underwent an operation to remove an acoustic neuroma. Ms George required translators to assist her during the four consultations prior to her operation. During the operation an adjoining facial nerve was severed which resulted in her suffering from facial palsy. Ms George alleged that the hospital and the surgeon failed to warn her of the significant risk of this occurring. The District Court upheld the allegation, awarding Ms George \$331,000 in damages. The hospital and surgeon appealed the decision.

The main issue on appeal was the scope of a medical practitioner's obligation to warn a patient of risks where effective communication relied upon translation. At trial, the primary judge identified 16 steps said to be relevant to the medical practitioner's duty to warn of risk. On appeal, these steps were found to be impermissibly extending the scope of the relevant duty. The Court held that the correct statement of the duty of care is "that medical practitioners take reasonable care to ensure that the material risks attending a surgical procedure are conveyed, and that the practitioners satisfy themselves that the substance of the information has been conveyed and been understood". It follows that a finding of misunderstanding on the part of Ms George does not necessarily equate to a breach of the medical practitioner's duty.

It was held that the judgment of the District Court be set aside. The Court ordered that the proceedings in the District Court be dismissed.

16 May 2016 - *Health Care Complaints Commission v Fisher [2016] NSWCATOD 62* - Unsatisfactory Professional Conduct, Professional Misconduct. Impairment and Competency to practice nursing. Where practitioner does not attend the hearing.

13 May 2016 - *Kwong v Abdulwahab [2016] NSWCA 107* - DAMAGES – negligent medical treatment – injury to plaintiff's right hand – liability admitted – past and future economic loss – diminution in earning capacity – whether attributable to hand injury or supervening back condition – onus of proof – challenges to findings of fact – finding that plaintiff manufactured back condition for ulterior purpose – unsubstantiated – failure of primary judge to undertake evidentiary analysis – power of Court of Appeal to make findings of fact – Supreme Court Act 1970 (NSW), 75A – loss of earning capacity attributable to hand injury.

## Queensland

13 May 2016 - [Downes v Affinity Health Pty Ltd \[2016\] QCA 129](#) - TORTS – NEGLIGENCE – ESSENTIALS OF ACTION FOR NEGLIGENCE – DUTY OF CARE – REASONABLE FORESEEABILITY OF DAMAGE – GENERALLY – where the applicant, a registered nurse at the respondent hospital, aided an elderly post-operative patient back into bed with the help of another nurse— where the applicant contends that she aggravated a spinal condition in the course of intercepting the patient and lifting her back into bed – where the applicant contends that the circumstances of the patient’s age and surgery warranted the patient to be given a bed with full length cot rails – where the applicant contends that if the respondent had provided the patient with a bed with full length cot rails then she would never have been able to climb out of bed, resulting in the applicant having to lift her back into bed and damaging her back – where the applicant contends that the respondent’s failure to provide the patient with a bed with full length cot rails amounts to a breach of duty – where the learned trial judge found that the hospital’s failure to provide full length cot rails was not a breach of duty – whether the respondent breached its duty of care to the applicant by not providing the patient with a bed with full length cot rails.

## LEGISLATION

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

### Commonwealth

18 May 2016 - [Private Health Insurance \(Prostheses\) Amendment Rules 2016 \(No. 1\)](#) F2016L00812 as made

18 May 2016 - [Health Insurance \(Anaesthesia service\) Determination 2016](#) F2016L00810 as made

17 May 2016 - [National Health \(Listing of Pharmaceutical Benefits\) Instrument 2012 \(PB 71 of 2012\)](#) F2016C00499 as amended

13 May 2016 - [National Health \(Highly specialised drugs program\) Special Arrangement 2010 \(PB 116 of 2010\)](#) F2016C00474 as amended

12 May 2016 - [National Health \(Efficient Funding of Chemotherapy\) Special Arrangement 2011 \(No. PB 79 of 2011\)](#) F2016C00469 as amended

12 May 2016 - [National Health \(Pharmaceutical Benefits\) Regulations 1960](#) F2016C00468 SR 1960 No. 17 as amended

12 May 2016 - [National Health \(Price and Special Patient Contribution\) Determination 2010 \(No. PB 109 of 2010\)](#) F2016C00467 as amended

### New South Wales

16 May 2016 - [Health Practitioner Regulation National Law \(NSW\) Amendment \(Review\) Act 2016](#) - Act (except Schedule 1 [3], [4] and [33]–[37]) commenced by proclamation

### Victoria

17 May 2016 - [Assisted Reproductive Treatment Amendment Act 2016](#) - Part 1 and sections 4(2) and 37 commenced by proclamation: Gazette S 153 p 1

## REPORTS

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

18 May 2016 - [Nurses and midwives reminded to renew by 31 May](#) - Nurses and midwives have two weeks to renew registration and avoid paying a late fee.

18 May 2016 - [Newsletter from the Board](#) - The Dental Board of Australia releases its latest newsletter.

18 May 2016 - [Communiqué](#) - The Dental Board of Australia releases its latest communiqué.

18 May 2016 - [Tribunal reprimands and suspends psychologist, finds professional misconduct](#) - A psychologist has been reprimanded and his license suspended for nine months.

18 May 2016 - [Tribunal rejects Board's improper report preparation allegations](#) - The Psychology Board's allegations against a psychologist have been rejected by the Queensland Civil and Administrative Tribunal.

16 May 2016 - [Call for applications](#) - Call for applications for appointment to the ACT/TAS/VIC Regional Board of the Psychology Board of Australia.

13 May 2016 - [AHPRA prosecutes former doctor](#) - AHPRA, on behalf of the Medical Board of Australia, has successfully prosecuted a former doctor.

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

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

#### **[NHMRC Research Tracker - 13 May](#)**

#### **[NHMRC Health Tracker - May 2016](#)**

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

19 May 2016 - [Scheduling delegate's final decisions: NCEs, May 2016](#) - Reasons for amendments to the Poisons Standard.

19 May 2016 - [Prescription medicines: registration of new chemical entities in Australia](#) - Added May 2016 prescription medicine New Chemical Entity (NCE) registrations.

19 May 2016 - [Updates to the Prescribing Medicines in Pregnancy database](#) - The database has been updated.

19 May 2016 - [Prescription medicines: new or extended uses, or new combinations of registered medicines](#) - Added Cosentyx / Zafrez, Esmya and Fycompa.

19 May 2016 - [Medical devices: how to stay included](#) - Medical devices post-market workshops in Sydney and Melbourne are now at capacity.

18 May 2016 - [Conference participation by the TGA](#) - The TGA is participating in these events and conferences

17 May 2016 - [Updating medicine ingredient names - information for sponsors](#) - Further information for sponsors on the transition period for the harmonisation of medicine ingredient names.

17 May 2016 - [HeartWare external controller](#) - Hazard alert - risk of problems due to loose power or data connectors.

17 May 2016 - [Therapeutic goods determinations](#) - Added specified foreign countries under Section 19A(3).

16 May 2016 - [Platinum 3000 Rhino 7 Capsules](#) - Safety advisory.

16 May 2016 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - Added Evolocumab rch (Repatha).

16 May 2016 - [Scheduling delegate's final decisions: Paracetamol / Ibuprofen, May 2016](#) - Reasons for decisions for amendments to the Poisons Standard.

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

10 May 2016 - [Australian Burden of Disease Study: impact and causes of illness and death in Australia 2011](#)

10 May 2016 - [Less disease and injury burden since 2003– more improvements possible](#)

[Burden of disease \(web page and presentations\)](#)

[Cancer landing page \(web page update\)](#)

19 May 2016 - [Incidence of insulin-treated diabetes in Australia 2014](#)

## [How many Australians have diabetes? \(web page update\)](#)

### [Australian Prudential Regulation Authority \(APRA\)](#)

17 May 2016 - [APRA has released 13 quarterly statistical publications for the private health insurance industry](#)

### [Australian Capital Territory \(ACT\). Health Directorate](#)

18 May 2016 - [Patient privacy zone extended](#) - The patient privacy zone around the health facility at 1 Moore Street in Civic will be extended to provide further protection for women accessing legal medical treatments, Minister for Health Simon Corbell announced today.

16 May 2016 - [Expanded outpatients department provides better treatment capacity](#) - Canberra Hospital's newly refurbished central outpatients department has now begun taking its first patients, Minister for Health Simon Corbell announced today. Mr Corbell said the \$1.1 million refurbishment would increase the consultation capacity of the central outpatients department by 15 per cent with four new consultation rooms and two new reception and waiting areas, bringing a fresh modern look and feel to the space.

12 May 2016 - [Excellence in nursing and midwifery celebrated with gala evening](#) - Nurses and midwives who have shown dedication and excellence within their profession were tonight congratulated by Minister for Health Simon Corbell at the ACT Nursing and Midwifery Excellence Awards.

### [New South Wales \(NSW\). Ministry of Health](#)

#### Media Releases

18 May 2016 - [Professor Brad Frankum](#) - Health Minister Jillian Skinner today congratulated Professor Brad Frankum on his election as president of the Australian Medical Association (NSW).

17 May 2016 - [New equipment to boost Aboriginal Dental Services](#) - Assistant Minister for Health Pru Goward today announced that six Aboriginal Community Controlled Health Services across NSW will share in over \$420,000 in new funding to enhance dental health services for Aboriginal people.

16 May 2016 - [More superstations and paramedics to boost Sydney's ambulance coverage](#) - Sydney's ambulance services will be boosted by a NSW Government investment in four more metropolitan superstations and 27 extra paramedic specialists.

16 May 2016 - [NSW smoking rates at all-time low](#) - New NSW Health data released today shows adult smoking rates have dropped by more than two per cent since 2014. Health Minister Jillian Skinner said the 2015 adult smoking rate in NSW was 13.5 per cent, down from 15.6 per cent in 2014.

16 May 2016 - [NSW leads the way in surgical excellence](#) - Australia's first centre dedicated to world-leading research into surgical techniques was officially opened by Health Minister Jillian Skinner at Royal Prince Alfred Hospital today. The Institute of Academic Surgery features a simulated operating theatre, surgical skills laboratory, microsurgery laboratory, tissue biobank and space for clinical research and education.

#### Policy Directives & Guidelines

19 May 2016 - [NSW Public Health Services SOP for Hazmat/CBRN Emergencies](#) - GL2016\_014

19 May 2016 - [NSW Public Health Services Standard Operating Procedure for an Explosive Event](#) - GL2016\_013

18 May 2016 - [Newborn Bloodspot Screening](#) - PD2016\_015

17 May 2016 - [NSW Health Policy Directives and Other Policy Documents](#) - PD2016\_014

#### Information Bulletins

17 May 2016 - [Public Holidays for 2016 to 2018](#) - IB2016\_022

### **Northern Territory. Department of Health**

18 May 2016 - **Health Department to test creeks for PFCs** - The Department of Health is about to begin a second round of environmental sampling in Rapid Creek and Ludmilla Creek after evidence of perfluorinated chemicals (PFCs) was found in both waterways.

### **Queensland. Department of Health**

19 May 2016 - **Vision to set 10-year health agenda** - Health priorities and funding in Queensland will be set based on four key priorities following the release of a vision for the health system in Queensland.

16 May 2016 - **Record nurse graduate intake in Gold Coast hospitals** - Around 150 new graduate registered nurses have joined Gold Coast hospitals this year as part of a record intake of graduate nurses.

15 May 2016 - **\$20m for high-quality respite care for Queenslanders with dementia** - The Palaszczuk Government is providing \$20 million in funding to community-based organisations to provide respite care for Queenslanders living with dementia or neurodegenerative conditions.

### **South Australia (SA). Department for Health & Ageing**

19 May 2016 - **Health alert: New Salmonella Warning - Mung Bean Sprouts** - SA Health has today ordered a local mung bean sprout producer Star Tu, to recall all of its products and stop selling immediately after Salmonella Saintpaul was found in packaged bean sprouts.

18 May 2016 - **Health alert: Antimicrobial resistance and clinical management of genital gonococcal infection** - Thirty percent of *Neisseria gonorrhoeae* strains from South Australia in the first quarter of 2016 had reduced susceptibility to azithromycin, compared to 0.9% to 3.9% for other states. All strains remained fully susceptible to ceftriaxone. Azithromycin is not a first line drug for treatment of gonorrhoea; it should only be used for patients allergic to cephalosporins or with severe penicillin allergy i.e. anaphylaxis/angioedema/urticaria.

13 May 2016 - **Meningococcal warning** - SA Health is urging South Australians to be aware of the signs of meningococcal infection, after three people were diagnosed with the disease in the past week.

### **Tasmania. Department of Health & Human Services**

19 May 2016 - **Upgrade of LGH 4K Children's Ward** - With the budget back on track the Hodgman Liberal Government is reinvesting in essential services such as health, and this will be reflected in the 2016-17 state budget.

17 May 2016 - **Major redevelopment of RHH Pharmacy** - With the budget back on track the Hodgman Liberal Government can afford to reinvest in essential services that matter to Tasmanian families, such as health, education and protecting the vulnerable.

### **Victoria. Department of Health**

18 May 2016 - **Celebrating Victoria's Inspiring Health Volunteers** - Minister for Health Jill Hennessy today paid tribute to the inspiring work of the dedicated volunteers who make a real difference, each and every day, caring for the most vulnerable at health services across Victoria.

18 May 2016 - **World Class Intensive Care Unit Opens To Patients** - A new state-of-the-art intensive care unit (ICU) that will provide first-class critical care to patients from The Royal Melbourne Hospital, The Royal Women's Hospital and the Peter MacCallum Cancer Centre opened its doors today.

16 May 2016 - **New Eye And Ear Emergency Department A Sight To Behold** - The Royal Victorian Eye and Ear Hospital redevelopment is one step closer to completion with the Minister for Health, Jill Hennessy, officially opening the new state-of-the-art Emergency Department today.

13 May 2016 - **New Ambulance Stations To Deliver Better Care For Port Fairy And Terang** - The Andrews Labor Government will fund a state-of-the-art rebuild and co-location of the Port Fairy ambulance station at the site of the Port Fairy Hospital. Visiting the hospital today, Minister for Health and Ambulance Services Jill Hennessy also announced a new urgent care centre as part of the Government's new \$200 million Regional Health Infrastructure Fund.

13 May 2016 - [Funding Boost For Wimmera Cancer Centre](#) - Wimmera oncology patients will be able to access first class cancer care, closer to home, thanks to a funding boost from the Andrews Labor Government's new \$200 million Regional Health Infrastructure Fund.

13 May 2016 - [Funding Boost To Improve Immunisation Coverage](#) - Victorian researchers will receive a funding boost to determine the best methods to overcome barriers that prevent Victorian children from being fully vaccinated. The \$290,000 grant for the Immunisation Behaviour Change project comes from the Andrews Labor Government's Public Sector Innovation Fund, established to test new approaches to complex policy problems.

13 May 2016 - [Here's an exclusive look at how our medicinal cannabis crop is progressing](#) - Planted in April, it's been tested, sampled and will be ready to harvest in just two months' time. In 2017, we'll make this life-saving treatment available to the sick kids who need it most.

#### Publications

16 May 2016 - [HACC schedule of fees 2016](#)

16 May 2016 - [2015-16 Community Health Program Data Reporting Guidelines v4.0](#) - The purpose of the Community Health Program Data Reporting Guidelines is to provide a common set of concepts, data elements and validation rules that define the basis of Community Health Program data collection and reporting requirements.

#### Western Australia. Department of Health

##### Media Releases

17 May 2016 - [Treasurer and Minister for Health: ICED funding aims to freeze high paralysis toll](#) - Groundbreaking studies to be undertaken through Western Australia's Neurotrauma Research Program (NRP) aim to reduce severe spinal cord damage and subsequent paralysis from traffic crashes and other accidents across the State.

16 May 2016 - [Minister for Health and Minister for Finance: Healthy choice for Perth in Australian-first ED app](#) - An Australian-first smartphone app puts choice in the hands of Perth health consumers, instantly advising travel times and waiting periods at hospital emergency departments.

13 May 2016 - [Treasurer and Minister for Health: \\$10 million to help bone bank change more lives](#) - Western Australia's only bone and tissue bank, PlusLife, will relocate its laboratories and develop new and expanded facilities, thanks to a \$10 million) capital grant included in the 2016-17 State Budget.

13 May 2016 - [Paediatric care closer to home](#) - Families have greatly benefitted from reduced waiting times and specialty care closer to home as they access public hospitals for paediatric care.

#### New Zealand. Ministry of Health

17 May 2016 - [New Zealand Health Research Strategy: discussion document](#) - The development of New Zealand's first health research strategy is the opportunity to decide how to get the best value out of New Zealand's investment in health research. The strategy will set a vision for health research over the next 10 years and set out the priorities and actions to achieve this.

#### Australian Medical Association (AuMA)

19 May 2016 - [Labor's Medicare freeze policy delivers certainty to doctors and their patients](#) - AuMA President, Professor Brian Owler, said today that Labor's pledge to lift the Medicare patient rebate freeze from 1 January 2017, if elected, would deliver certainty to doctors and patients, and remove a potentially devastating blow to medical practice in Australia, particularly general practice.

17 May 2016 - [Funding cuts undermining public hospital emergency department targets](#) - The AuMA is calling on all the major parties to make public hospital funding a policy priority ahead of the July election. AuMA Vice President, Dr Stephen Parnis, an emergency physician, said today that a recent peer-reviewed clinical article shows clearly how funding cuts affect the capacity of public hospitals to meet targets and community health needs. The article – The National Emergency Access Target (NEAT) and the 4-hour rule: time to review the target – published in the latest edition of the Medical Journal of Australia (MJA),

links the National Emergency Access Target (NEAT) with reducing in-hospital mortality of emergency admissions.

15 May 2016 - [AuMA launches National campaign against the Medicare rebate freeze](#) - The AuMA today launched a national campaign against the Government's Medicare patient rebate freeze, with posters and campaign materials being distributed to the AuMA's more than 30,000 members – GPs and all other medical specialists – and will be made available to all doctors and practices around the country.

13 May 2016 - [AuMA National Conference 2016](#) - The 2016 AuMA National Conference is taking place at the National Convention Centre, Canberra, from 27-29 May. Speakers at the Conference include the Minister for Health, the Hon Sussan Ley MP; Shadow Minister for Health, the Hon Catherine King MP; and the Leader of the Australian Greens, Senator Richard Di Natale.

## 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.

Michael regularly presents to medical groups and hospitals on medico-legal issues.

#### Contact Details

T +61 3 9274 5437

[michael.regos@dlapiper.com](mailto:michael.regos@dlapiper.com)

## MORE INFORMATION

Contact your nearest DLA Piper office:

### BRISBANE

Level 9, 480 Queen Street  
Brisbane QLD 4000  
T +61 7 3246 4000  
F +61 7 3229 4077  
[brisbane@dlapiper.com](mailto:brisbane@dlapiper.com)

### CANBERRA

Level 3, 55 Wentworth Avenue  
Kingston ACT 2604  
T +61 2 6201 8787  
F +61 2 6230 7848  
[canberra@dlapiper.com](mailto:canberra@dlapiper.com)

### MELBOURNE

Level 21, 140 William Street  
Melbourne VIC 3000  
T +61 3 9274 5000  
F +61 3 9274 5111  
[melbourne@dlapiper.com](mailto:melbourne@dlapiper.com)

### PERTH

Level 31, Central Park  
152–158 St Georges Terrace  
Perth WA 6000  
T +61 8 6467 6000  
F +61 8 6467 6001  
[perth@dlapiper.com](mailto:perth@dlapiper.com)

### SYDNEY

Level 22, No.1 Martin Place  
Sydney NSW 2000  
T +61 2 9286 8000  
F +61 2 9286 8007  
[sydney@dlapiper.com](mailto:sydney@dlapiper.com)

### [www.dlapiper.com](http://www.dlapiper.com)

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