



**16 MARCH 2015**

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## JUDGMENTS

### New South Wales

10 March 2015 - [Morocz v Marshman \[2015\] NSWSC 149](#)

The New South Wales Supreme Court has ruled that the evidence of multiple expert witnesses in an ongoing medical negligence proceeding is inadmissible.

The plaintiff claims that she has suffered injury as a result of the defendant's negligence in failing to warn her of the risks associated with a surgical procedure to treat her palmar hyperhidrosis (sweaty palms).

The plaintiff sought to rely on the evidence of number of expert witnesses to establish the defendant's liability, and applied to the Court for an order permitting the witnesses to give evidence via video link. The Court found that it was largely unnecessary to decide the application as it considered that the evidence of a number of the witnesses was inadmissible.

The main liability issues relevant to the proceedings were:

- 1) What risks associated with the procedure had the plaintiff not been adequately warned of by the defendant?
- 2) What conditions caused by the surgery does the plaintiff now suffer which she was not warned about prior to the procedure?

The Court held that seven of the proposed witnesses were not relevantly qualified to express opinions on those issues. The proposed witnesses were either not surgeons, or had not performed the relevant surgical procedure, and that none of the proposed witnesses had examined the plaintiff. The Court considered that an examination of the plaintiff was an "essential precondition" to providing a reliable opinion regarding the plaintiff's current medical condition.

10 March 2015 - [Nacu v Alano \[2015\] NSWCATAD 37](#)

Alleged sexual harassment - failure to prove - where both employees employed by St Vincent's Private Hospital

11 March 2015 - [Health Care Complaints Commission v Ferguson \[2015\] NSWCATOD 14](#)

Administrative law – Civil and Administrative Tribunal (NSW) – occupational division – health practitioner list – complaint against a nurse – impairment – alcohol dependence or abuse – not competent to practise nursing not proven – reprimand - costs.

### Queensland (QLD)

16 February 2015 - [Zhang v Chinese Medicine Board of Australia \[2015\] QCAT 053](#)

The Queensland Civil and Administrative Tribunal has affirmed that it has an unfettered discretion to make appropriate costs orders for proceedings brought under the *Health Practitioner Regulation National Law Act 2009* (Qld). Section 201 of that Act authorises the Tribunal to 'make any order about costs it considers appropriate for the proceedings.'

The Chinese Medicine Board of Australia sought an order that Mr Zhang pay the Board's costs, following Mr Zhang's unsuccessful application to the Tribunal seeking a review of the Board's decision that he was not a suitable person to be registered as a Chinese medicine practitioner.

Mr Zhang argued that he should not have costs awarded against him on the basis that he had not been represented at the proceeding and that any costs order would cause him financial hardship. He also argued that the Tribunal should exercise its discretion with reference to section 102 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), which provides that parties should bear their own costs.

The Tribunal held that its discretion to decide costs under the National Law should not be limited by reference to other legislation. The Tribunal recognised that Mr Zhang would suffer hardship as a result of a costs order, but found that, in all the circumstances, it was appropriate to order that Mr Zhang pay the Board's costs. It made this finding on the basis that Mr Zhang was wholly unsuccessful in the proceeding and had lied to the Board.

## South Australia

6 March 2015 - [Soo v Physiotherapy Board of Australia \[2015\] SADC 30](#)

Appeal from South Australian Health Practitioners Tribunal to District Court - Complaint of professional misconduct before the Tribunal upon referral under s193 - Preliminary argument by appellant that proceedings required to be taken before Court of summary jurisdiction and that such proceedings time barred by s52 Summary Procedures Act 1921 - Preliminary argument rejected by Tribunal - Appellant invokes an appeal under s23 *Health Practitioners Regulation National Law (South Australia) Act 2010* to District Court - Respondent challenges District Court jurisdiction - Whether appeal competent - Examination of legislative structure - Interpretative approach required to *Health Practitioners Regulation National Law (South Australia) Act 2010* - Effect of codification - Purposes of the legislation - Meaning to be given to "a decision made by the Tribunal" in s23 - Appeal competent - Substantive argument rejected - Appeal dismissed.

## Western Australia (WA)

9 March 2015 - [Nursing and Midwifery Board of Australia v Buckby \[2015\] WASAT 19](#)

Nurse practitioner - *Health Practitioner Regulation National Law (WA) Act 2010* - sexual misconduct with patients - registration cancelled.

## LEGISLATION

### Commonwealth

[National Health \(Epworth and Cabrini Private Hospitals Paperless Prescribing and Claiming Trial\) Special Arrangement 2015 \(PB 18 of 2015\)](#) - This instrument revokes the National Health (Epworth and Cabrini Private Hospitals Paperless Prescribing and Claiming Trial) Special Arrangement 2014 and remakes a new instrument to extend trial to Epworth Richmond Hospital.

### New South Wales

[Poisons and Therapeutic Goods Amendment \(National Residential Medication Chart and Influenza Vaccination\) Regulation 2015](#) (No. 138 of 2015) - Commenced 5 March 2015 - the objects of this Regulation are: (a) to allow prescriptions for most Schedule 4 (prescription only) medicines to be filled from prescriptions on National Residential Medication Charts (which are permitted by Commonwealth law to be used as a prescription for the supply of medicines to, and the claiming of most pharmaceutical benefits by, residents in all residential care facilities (nursing homes) funded under provisions of the *Aged Care Act 1997* of the Commonwealth), and (b) to require the keeping of records in relation to substances prescribed to residents of residential care facilities, in cases where prescriptions on National Residential Medication Charts are used, and (c) to allow pharmacists to administer influenza vaccinations on their own authority (without either a prescription or the direction of a medical practitioner or other authorised health practitioner).

## PUBLICATIONS & REPORTS

### Australia. Department of Health & Ageing

Media releases

13 March 2015 - [Pharmaceutical Benefits Advisory Committee \(PBAC\)](#) - The PBAC agenda for March includes many important new drugs.

11 March 2015 - [AFL kids kicking healthy goals](#) - A new pilot programme will help schools increase the number of students playing AFL.

12 March 2015 - [Australia's resolution on ice gathers support at UN drugs conference](#) - Australia's resolution to the 58th UN Conference on Narcotics - urging global cooperation on fighting the drug ice - is gathering support.

Pharmaceutical Benefits Scheme - Confirmed 1 April 2015 prices resulting from 2015 April Cycle of Price Disclosure - Confirmed 1 April 2015 prices resulting from the 2015 April Cycle of Price Disclosure have now been published on the Price Disclosure (SPD) web page. [Read more.](#)

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

12 March 2015 - [Expression of interest - NICNAS Strategic Consultative Committee](#) - NICNAS has recently called for expression of interest from national organisation for representations on the NICNAS Strategic Consultative Committee. Closing date 17 March 2015.

12 March 2015 - [Triazolam \(Halcion\) 0.125 mg tablets](#) - Recall - bottles supplied without child-resistant caps.

12 March 2015 - [Methotrexate \(Methoblastin\) 2.5 mg and 10 mg tablets](#) - Recall for product correction - bottles supplied without child-resistant caps.

12 March 2015 - [Mefenamic acid \(Ponstan\) 250 mg capsules, bottles of 50](#) - Recall - bottles supplied without child-resistant caps.

12 March 2015 - [Cabergoline \(Dostinex and Cabaser\) 0.5 mg, 1 mg and 2 mg tablets](#) - Recall for product correction - bottles supplied without child-resistant caps.

12 March 2015 - [Medicines supplied without child-resistant caps - multiple brands](#) - The following medicines (with brand names in brackets) should be returned to a pharmacy: alprazolam (Xanax), cabergoline (Dostinex and Cabaser), mefenamic acid (Ponstan), methotrexate (Methoblastin) and triazolam (Halcion).

12 March 2015 - [Alprazolam \(Xanax\) 2 mg tablets](#) - Recall - bottles supplied without child-resistant caps.

11 March 2015 - [Australian Public Assessment Report \(AusPAR\) guidance document](#) - Information about the structure, and processes for the compilation, review and publishing of an AusPAR.

11 March 2015 - [Bright Eyes eye drops](#) - Consumers are advised not to purchase Bright Eyes products being offered for sale on the internet.

10 March 2015 - [TGA key performance indicators: July to December 2014](#) - This KPI report covers aspects of our performance between July and December 2014.

10 March 2015 - [Consultation: metoclopramide: proposed advisory statements for medicines](#)- The TGA is seeking comments from interested parties on proposed advisory statements for metoclopramide when included in non-prescription medicines for oral administration. Closing date: 7 April 2015.

6 March 2015 - [Zovirax Ophthalmic ointment](#) - Update 2 - alternative product now available.

6 March 2015 - [Clinical performance requirements and risk mitigation strategies for HIV tests](#) - Guidance document for manufacturers and sponsors of HIV tests.

6 March 2015 - [New ingredient names available for metal amino acid chelates](#) - Added Iron (III) glycinate.

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

9 March 2015 – On the Radar – Issue 213 ([PDF 98KB](#)) ([Word 128KB](#)).

4 March 2015 - [A better way to care: Dementia and delirium posters.](#)

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

13 Mar 2015 - [Deaths \(web snapshot\).](#)

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

11 March 2015 - [NHMRC releases statement and advice on homeopathy.](#)

3 March 2015 - [Australian Government Clinical Trials Initiatives](#) - An overview of current activities to improve the clinical trials environment.

## **Australian Health Practitioner Regulation Agency & The Boards**

### **Tribunal reprimands practitioner for unprofessional conduct**

10 March 2015 - The Queensland Civil and Administrative Tribunal has reprimanded pharmacist Mr Brian McAllan and found he had engaged in unprofessional conduct. [Read full article](#).

3 March 2015 - [Review of Complementary Medicines Regulation](#) - The Chinese Medicine Board of Australia draws your attention to a Call for submissions - 'Review of complementary medicines regulation'. [Read full article](#).

10 March 2015 - [Watch the webinar: Career breaks and recency of practice – registration as an occupational therapist](#) - Watch a presentation on Career breaks and recency of practice. [Read full article](#).

10 March 2015 - [Tribunal reprimands practitioner for unprofessional conduct](#) - The Queensland Civil and Administrative Tribunal has reprimanded pharmacist Mr Brian McAllan and found he had engaged in unprofessional conduct. [Read full article](#).

6 March 2015 - The Pharmacy Board of Australia releases its latest communiqué. [Read full article](#).

6 March 2015 - The Physiotherapy Board of Australia releases its latest communiqué. [Read full article](#).

11 March 2015 - The Psychology Board of Australia has released the February 2015 communiqué. [Read full article](#).

## **Australia. Private Health Insurance Administration Council (PHIAC)**

13 January 2015 - [Private Health Insurance \(Prudential Supervision\) Bill 2015](#).

10 March 2015 - [The Operations of Private Health Insurers Annual Report 2013 -14](#).

## **Australian Capital Territory (ACT). Health Directorate**

Media release

11 March 2015 - [Heart Foundation ACT Report - food marketing](#) - A report from the Heart Foundation ACT highlights widespread marketing of unhealthy food and drinks to children in Canberra.

10 March 2015 - [Traffic changes at Canberra Hospital](#).

12 March 2015 - [Turning wheels for a healthier future](#).

12 March 2015 - [Bipartisan support welcomed as new funding to tackle domestic violence announced](#).

## **New South Wales Health (NSW)**

Media release

9 March 2015 - [NSW Health reminding of the importance and protective benefits of rotavirus vaccine](#).

Policy directive

11 March 2015 - [Tuberculosis Management of People Knowingly Placing Others at Risk of Infection](#).

Information bulletins

10 March 2015 - [Motor Vehicles - Award Employees - charges for private use](#).

9 March 2015 - [National Health and Medical Research Council Research Staff Salary Rates 1 January 2015](#).

## **New South Wales. Health Care Complaints Commission**

12 March 2015 - [Webinar: The Commission's Early Resolution Project](#).

## **Queensland. Department of Health**

Media releases

11 March 2015 - [Health Minister demands Springborg apologise to public service](#) -Health Minister Cameron Dick has called for Lawrence Springborg to apologise for his personal attack on the integrity of the public service.

10 March 2015 - [Labor to address long wait lists](#) - Health Minister Cameron Dick today announced the Queensland Government will make \$30 million immediately available to Queensland Hospital and Health Services to start the process of addressing the 'waiting list for the waiting list'.

8 March 2015 - [\\$77 million on advertising and bureaucracy under LNP's wait time program](#) - The credibility of Lawrence Springborg's wait time guarantee has been blown out of the water with revelations that \$77 million was to be spent on advertising and bureaucracy over three years, Health Minister Cameron Dick said today.

6 March 2015 - [114,000 waiting 'longer than clinically recommended time' under LNP](#) The LNP's record on specialist outpatient appointments in Queensland hospitals has taken a hit with 114,000 patients on the 'waiting list for the waiting list' waiting longer than clinically recommended times, Health Minister Cameron Dick said today.

5 March 2015 - [Labor to review community health program funding](#) - Health Minister Cameron Dick today confirmed that Labor would honour its election commitment to review the funding program that supports non-government community health providers.

13 March 2015 - [Keep clear of cracked, dirty eggs.](#)

10 March 2015 - [Measles alert for Brisbane.](#)

10 March 2015 - [Roma hospital in safe hands.](#)

9 March 2015 - [Thursday Island's first nurse-assisted dialysis patients start treatment.](#)

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

Media releases

13 March 15 - [Salmonella cases on the rise.](#)

6 March 15 - [RAH misconduct investigation.](#)

March 2015 - Nursing and Midwifery News - [March 2015.](#)

March 2015 - Clinical Senate - [Choosing wisely: the message, messenger and method \(PDF 111KB\) \(opens in a new window\).](#)

March 2015 - InCentral News - [March 2015](#) (Newsletter of central Adelaide Local Health Network).

### **Victoria. Department of Human Services**

Media releases

12 March 2015 - [Statement From The Minister For Health.](#)

11 March 2015 - [New children's hub opens In Craigieburn published.](#)

11 March 2015 - [New critical care services for Sunshine hospital.](#)

6 March 2015 - [Ice action plan will help regional communities published.](#)

5 March 2015 - [States unite behind 15 hours of kinder.](#)

5 March 2015 - [Ice action plan will help families and save lives.](#)

5 March 2015 - [Ice action plan: supporting families, treating users.](#)

5 March 2015 - [Ice action plan: protecting our frontline workers.](#)

5 March 2015 - [Ice action plan: making our communities safer.](#)

4 March 2015 - [New funding for unique child-focused research.](#)

4 March 2015 - [Statement regarding Tony Abbott's GP tax.](#)

4 March 2015 - [Parkland returns to old Royal Children's hospital site.](#)

2 March 2015 - [Ambassador announced for Premier's active April.](#)

2 March 2015 - [Recognising our brightest medical minds.](#)

#### **Western Australia (WA). Department of Health**

March 2015 - WA Aboriginal Health and Wellbeing Framework 2015–2030 launched - The Department of Health has launched its new [WA Aboriginal Health and Wellbeing Framework 2015-2030 \(PDF 10MB\)](#), aimed at shaping and guiding how WA Health and other agencies approach Aboriginal health for the next 15 years.

13 March 2015 - [New website boosts Newborn Emergency Transport Service of Western Australia's reach.](#)

5 March 2015 - [Workshop to help prevent preterm births.](#)

#### **New Zealand. Ministry of Health**

12 March 2015 - [Managing Chronic Kidney Disease in Primary Care.](#)

#### **United Kingdom (UK). Department of Health (DOH)**

6 March 2015 - Open consultation - [Strengthening rights and choices for people to live in the community](#) - Seeks views to strengthen rights of people with learning disabilities, autism and mental health issues to enable them to live independently.

12 March 2015 - [New fund to improve the health of homeless people.](#)

12 March 2015 - [Ebola outbreak: An update on the UK's response in West Africa.](#)

11 March 2015 - [First patients diagnosed through genome sequencing.](#)

11 March 2015 - [Review into medical innovation and technology: further details.](#)

10 March 2015 - [Parents to get complete picture of child's development.](#)

12 March 2015 - [Adult social work: knowledge and skills.](#)

12 March 2015 - [Measures to help staff speak out about patient safety.](#)

#### **British Medical Association (BMA)**

11 March 2015 - [Integrated care pilot areas proposed.](#)

9 March 2015 - [BMA opposes UN plan to 'schedule' ketamine.](#)

6 March 2015 - [Morecambe Bay care failings 'unacceptable'.](#)

#### **American Medical Association (AMA)**

12 March 2015 - [New AMA, CDC Initiative Aims to 'Prevent Diabetes STAT'](#) - With more than 86 million Americans living with prediabetes and nearly 90 percent of them unaware of it, the AMA and the Centers for Disease Control and Prevention (CDC) today announced that they have joined forces to take urgent action to Prevent Diabetes STAT and are urging others to join in this critical effort.

## ABOUT US

### Caroline Atkins



Caroline Atkins is the Office Managing Partner for the Canberra office of DLA Piper and has worked extensively in the health sector for Australian Government agencies. Her experience includes the conduct of major technology projects for the health sector, such as in the e-health and aged care sectors, and in advising the Commonwealth on the implementation of policy programs in contractual arrangements (including for medical indemnity insurance and for CSO arrangements for PBS funding). She has also advised the National Blood Authority on major Commonwealth contracts for the supply of blood products including with the Red Cross and CSL. Caroline's commercial experience extends over 30 years and also includes significant experience in ICT outsourcing, whole-of-government technology procurements, intellectual property rights licensing, contract management, procurement strategy and dispute resolution.

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