



HEALTH ALERT

24 JUNE 2013

Judgments	2
New South Wales	2
Legislation	2
Commonwealth	2
Reports	3
Australia. Department of Health & Ageing	3
Australian Health Practitioner Regulation Agency and the boards	3
Australian Commission on Safety and Quality in Health Care	3
Australian Institute of Health and Welfare	3
Australia. National Health & Medical Research Council	3
Australia. Therapeutic Goods Administration	3
Australia. Private Health Insurance Administration Council	4
Australia. National Mental Health Commission	4
Australian National Audit Office	4
Australian Competition and Consumer Commission	4
Australian Capital Territory. Health Directorate	4
New South Wales. Ministry of Health	4
Northern Territory. Department of Health	5
Queensland. Department of Health	5
South Australia. Department for Health & Ageing	5
Victoria. Department of Health	5
Western Australia. Department of Health	6
New Zealand. Ministry of Health	6
United Kingdom. Department of Health	6
Canada. Health Canada	6
United States of America. Department of Health & Human Services	6
British Medical Association	6
Canadian Medical Association	7
American Medical Association	7

JUDGMENTS

New South Wales

14 June 2013 - [King v Western Sydney Local Health Network \[2013\] NSWCA 162](#)

The appellant developed foetal varicella syndrome (FVS) after her mother contracted varicella in the second trimester of her pregnancy. The syndrome caused severe physical and intellectual disability. The mother had not suffered from chickenpox before so should have been offered a dose of varicella-zoster immunoglobulin (VZIG), in accordance with the standard medical practice in 2002, to boost her defences to the virus.

It was accepted that the respondent owed a duty of care to the appellant to advise her mother of the availability of VZIG for treatment following her exposure to chickenpox and that the respondent breached that duty in failing to prescribe VZIG. The issue on appeal was the trial judge's determination that, on the balance of probabilities, causation had not been established.

The Court stated that to establish causation, it was necessary for the appellant to establish that:

- Her mother had contracted chickenpox within 96 hours of visiting the hospital;
- Her mother would have chosen to have VZIG administered had it been offered to her; and
- That administration of the drug to her mother would have prevented the appellant from contracting FVS as a result of her mother's chickenpox.

The Court found that not giving the mother VZIG at most prevented the very small statistical risk of the appellant contracting FVS from minutely decreasing; "[i]t did not *cause* the appellant's injury." The Court held that the failure to administer VZIG did not materially contribute to the appellant's risk of suffering FVS, and the appeal was dismissed.

[Harris v Bellemore \(No 5\) \[2013\] NSWSC 770](#)

Torts - medical negligence - lengthy hearing at first instance - proceedings remitted by Court of Appeal for new trial limited to four questions expressly articulated by the Court - scope of questions - whether parties should have leave to adduce evidence as to the questions remitted.

United Kingdom

21 May 2013 - [Re SB \[2013\] EWHC 1417 \(COP\)](#)

AB, a patient suffering from bipolar disorder, became pregnant in December 2012 and in the early stages was positive about wanting the baby. However in April 2013 her attitude reversed and she voluntarily attended a clinic and an appointment for an abortion was arranged, which she did not keep. At the beginning of May she was compulsorily detained under the *Mental Health Act*. The hospital where she was detained facilitated an assessment in relation to the proposed abortion, but believed she lacked capacity to make her own decision to have a termination.

Neither the patient's treating psychiatrist nor an independent psychiatrist considered the patient had the capacity to make the decision. They noted the "strong temporal relationship" between when the patient ceased taking her medication and relapsed, and wanting to terminate the pregnancy.

While accepting the patient's mental illness and that she suffers "an impairment of, or a disturbance in the functioning of, the mind or brain", Holman J stated that wasn't the relevant test or requirement under the *Mental Capacity Act*. The relevant question was whether the patient is "unable" to make a decision. The patient had made a decision to terminate her pregnancy weeks prior to judgment, and provided several reasons for this. Holman J found that "it would be a total affront to the autonomy of this patient to conclude that she lacks capacity to the level required to make this decision". It was held that the patient had capacity to make decisions about her desired termination.

LEGISLATION

Commonwealth

[National health \(listing of pharmaceutical benefits\) amendment instrument 2013 \(No. 8\) \(No. PB 39 of 2013\)](#).

National health (remote Aboriginal health services program) special arrangements amendment instrument 2013 (No. 1) (No. PB 34 of 2013).

Therapeutic goods information (adverse event notifications – medical devices) specification 2013.

National health (immunisation program - designated vaccines) variation determination 2013 (No. 1).

REPORTS

Australia. Department of Health & Ageing

Media releases

18 June 2013 - **New website details frontline health services delivered by Medicare locals.** Health Minister Tanya Plibersek has launched a new government website which gives Australians information about important health services being provided by Medicare locals in their local communities.

17 June 2013 - **New high level group advise on tackling indigenous suicide.** A new expert group has been set up to advise the Federal Government on improving mental health and suicide prevention programs for Aboriginal and Torres Strait Islander people.

14 June 2013 - **Legislative and governance forum on food regulation** - final communiqué.

14 June 2013 - **Consultation on improving the collection of financial data from aged care providers.**

Australian Health Practitioner Regulation Agency and the boards

19 June 2013 - Due to a lack of evidence, the Medical Board of Australia will take no further action against senior Western Australian (WA) health officials named in a notification lodged in early 2013. | [Read article](#)

14 June 2013 - The chiropractic Board of Australia releases its latest newsletter. | [Read article](#)

20 June 2013 - The national specialist international medical graduate (IMG) committee releases its latest communiqué. | [Read article](#)

Australian Commission on Safety and Quality in Health Care

17 June 2013 – **On the radar - Issue 131 (94KB).**

Australian Institute of Health and Welfare

17 June 2013 - **Towards better Indigenous health data.**

19 June 2013 - **National opioid pharmacotherapy statistics annual data collection 2012 - media release.**

19 June 2013 - **Healthy for life - Aboriginal community controlled health services: report card.**

17 June 2013 - **Report on the use of linked data relating to Aboriginal and Torres Strait Islander people. Thematic list of projects using linked data relating to Aboriginal and Torres Strait Islander people.**

Australia. National Health & Medical Research Council (NHMRC)

Human frontier science program on track for 2014-2016.

Interview with the Lancet regarding the declaration of Helsinki.

14 June 2013 - **NHMRC research tracker.**

Australia. Therapeutic Goods Administration (TGA)

21 June 2013 - **Consultation principles for therapeutic goods regulatory reforms.** By following the consultation principles we will ensure that consultation activities are conducted in a consistent and coordinated manner.

20 June 2013 - **GNV slimming pills - labelled as MSV, ESV and GRL.** The TGA advises that GNY Australia has initiated a recall of GNY slimming pills - labelled as MSV (Strong Version), ESV (Extra Strong Version) and GRL (Rapid Loss soft gel capsules) as they pose a serious health risk.

19 June 2013 - [TGA website - new mobile friendly version](#). If you are using a smart phone or device to access the TGA website you can now see a mobile friendly version.

19 June 2013 - [Database of adverse event notifications \(DAEN\)](#). The TGA has launched the DAEN – medical devices which provides information about adverse events associated with medical devices used in Australia.

18 June 2013 - [TGA presentation given at the complementary healthcare council \(CHC\) advertising seminar on 11 June 2013](#).

18 June 2013 - [Consultation: Over the counter \(OTC\) N2 application requirements and OTC medicine monographs for aspirin, paracetamol and ibuprofen](#). The TGA is seeking comments from interested parties on draft documentation intended for publication as part of the implementation of a 12 month trial in Australia of the OTC new product N2 application (or monograph application) route. Closing date: 16 July 2013.

17 June 2013 - [Submissions received: Permitted \(coded\) indications for listed medicines](#). Submissions received in response to the consultation paper.

[Australia. Private Health Insurance Administration Council](#)

21 June 2013 - [Review of the solvency and capital adequacy standards – Quantitative impact study 2 \(QIS2\)](#).

[Australia. National Mental Health Commission](#)

17 June 2013 - [Commission welcomes new high level group on Indigenous suicide](#).

[Australian National Audit Office](#)

20 June 2013 - [Administration of the general practitioner \(GP\) super clinics program](#).

[Australian Competition and Consumer Commission \(ACCC\)](#)

20 June 2013 - [ACCC proposes not to authorise fee arrangements by ophthalmologists](#).

[Australian Capital Territory. Health Directorate](#)

14 June 2013 - [2013 Health promotion awards](#). Winners announced.

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

Media releases

19 June 2013 - [NSW Health urges parents to be aware but not alarmed about enterovirus](#).

20 June 2013 - [NSW Government enacts childhood vaccination reform](#).

18 June 2013 - [More lies from Labor about NSW health budget](#).

18 June 2013 - [\\$1.45 billion commitment to help more people with mental illness](#).

18 June 2013 - [Billion dollar building boost for NSW hospitals](#).

18 June 2013 - [Driving innovation through medical research](#).

18 June 2013 - [NSW Government boosts health by \\$884 million](#).

17 June 2013 - [Main works tenders called for south east regional hospital](#).

14 June 2013 - [Commonwealth must do more on interns](#).

14 June 2013 - [NSW leads national bid to see chronic pain recognised as a disease](#).

[Epidemiology of out of hospital cardiac arrests, NSW, 2012: Time, place and person](#).

[No smoking at public transport stops and station \(A3 poster\)](#).

[No smoking in spectator areas of sports ground \(A3 poster\)](#).

[My personal health record](#).

Health risk assessment of dioxin emissions from MM Kembla, Port Kembla, Illawarra NSW.

Policy directive

17 June 2013 - [Chaplains subsidy](#).

Information bulletin

17 June 2013 - [National Aboriginal and islander day observance committee \(NAIDOC\) week 2013 - IB2013_023](#).

Northern Territory. Department of Health

[Robyn Lambley - Patient assistance travel scheme to become clearer and simpler.](#)

[Robyn Lambley - Alice Springs mandatory alcohol assessment site secured.](#)

[Robyn Lambley - Health Minister Robyn Lambley has announced a series of responsible changes to vehicle parking at royal Darwin hospital.](#)

Queensland. Department of Health

Media releases

20 June 2013 - [Legionella testing in Queensland hospitals](#) - Minister for Health | The Honourable Lawrence Springborg. Queensland Health will start reporting legionella water testing results from hospitals across the State by the end of next week.

19 June 2013 - [Palaszczuk challenged to support better healthcare in Queensland](#) - Minister for Health | The Honourable Lawrence Springborg. Health Minister Lawrence Springborg has accused Labor and its State Opposition Leader of living a lie over past policies of privatisation and the reckless mismanagement of Queensland Health.

[In front outback research grant recipients announced.](#)

[Louis Ariotti memorial award recipient announced.](#)

South Australia. Department for Health & Ageing

[Media release: Aboriginal health scholarships.](#)

18 June 2013 - Independent expert to carry out patient assistance transport scheme (PATS) review. A leading healthcare expert will review the PATS. | [Read article](#)

Victoria. Department of Health

Media releases

19 June 2013 - [Patients are the winners in sunshine hospital works](#). Patients in the western region will benefit from the ongoing redevelopment of the sunshine hospital, Health Minister David Davis said today.

18 June 2013 - [Coalition delivers \\$9.3 million for cancer research](#). Victorian cancer researchers will receive \$9.3 million to support ground breaking research programs and to support talented and emerging cancer researchers as part of a \$14.9 million Victorian Coalition Government boost to cancer research in Victoria.

17 June 2013 - [Grants support multicultural seniors to remain socially engaged](#). Seniors from multicultural groups will share in \$233,000 in Victorian Coalition Government funding across the state to help them remain active and participating community members and enjoy the spoils of a life well earned, Minister for Health and Ageing David Davis announced today.

May 2013 - [Activity based funding newsletter](#).

[Vaccine side effects.](#)

[New home and community care education and training : Bulletin 6.](#)

Western Australia. Department of Health

Media releases

20 June 2013 - [Minister for Health and Minister for Mental Health: Closing the gap funding continues.](#)

20 June 2013 - [OD 0439/13](#). The WA health employee grievance resolution policy has been amended to make provision for the resolution of bullying, harassment and discrimination grievances.

20 June 2013 - [OD 0438/13](#). The WA health equal opportunity and diversity policy has been amended to align with the *Equal Opportunity Act 1984 (WA)* and make provision for the resolution of harassment and discrimination grievances.

20 June 2013 - [OD 0437/13](#). The WA health preventing and responding to workplace bullying policy has been amended to align with the WorkSafe WA Code of Practice – Violence, aggression and bullying at work 2010 and make provision for the resolution of workplace bullying grievances.

20 June 2013 - [IC 0147/13](#). Five percent wage increase - advice of new salary rates for registered nurses, midwives, enrolled (mental health) and enrolled (mothercraft) nurses.

19 June 2013 - [OD 0436/13](#). Recording non-admitted outpatient activity for rehabilitation in the home (RITH). The purpose of this operational directive is to advise health services of the requirement that from 1 July 2013, all RITH activity must be managed and recorded using an approved metropolitan patient administration system (PAS): TOPAS or webPAS.

New Zealand. Ministry of Health

20 June 2013 - [Annual report on drinking water quality 2011–2012.](#)

United Kingdom. Department of Health

[Final design of consistent nutritional labelling system given green light.](#)

[Oral statement on Morecambe Bay.](#)

[Technical guidance on nutrition labelling.](#)

[Front of pack nutrition labelling guidance.](#)

[Supporting registered managers to build compassion in care homes.](#)

[National health scheme \(NHS\) procurement standards.](#)

Canada. Health Canada

14 June 2013 - [Harper Government launches plain language labelling initiative to improve drug safety for Canadians.](#) Proposed changes will make it easier for Canadians to read drug labels.

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

[HHS releases new public health service guideline to reduce disease transmission through organ transplantation.](#) Today, the U.S. Department of HHS released a new guideline to improve patient safety by reducing unexpected disease transmission through organ transplantation. This guideline updates the 1994 U.S. public health service (PHS) guideline for preventing transmission of human immunodeficiency virus (HIV) through organ transplantation and adds guidance for reducing unexpected transmission of hepatitis B virus (HBV) and hepatitis C virus (HCV) through organ transplants.

British Medical Association (BMA)

18 June 2013 - [BMA urges doctors not to force feed hunger strikers.](#) Doctors at Guantanamo Bay should not be involved in force feeding hunger strikers, the BMA has insisted.

17 June 2013 - [Patients face emergency care "duplication and delay."](#) The BMA will help an expert team seek solutions to improve NHS services and ease pressures on urgent and emergency care.

14 June 2013 - [Consultants face online rating.](#) Consultants at a Manchester hospital will be the first to have individual performance data and patient feedback made public in an effort to improve transparency.

Canadian Medical Association

18 June 2013 - [Calgary to host major November meeting on the health of physicians.](#)

14 June 2013 - [Clinical guidance on avian influenza A\(H7N9\) virus now available.](#)

American Medical Association (AMA)

14 June 2013 - [AMA Awards \\$11m to transform the way future physicians are trained.](#) Eleven medical school awardees become part of AMA learning consortium to rapidly disseminate best practices.

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

MORE INFORMATION

Contact your nearest DLA Piper office:

BRISBANE

Level 29, Waterfront Place
1 Eagle Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3229 4077
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

MELBOURNE

Level 21, 140 William Street
Melbourne NSW 3000
T +61 3 9274 5000
F +61 3 9274 5111
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

SYDNEY

Level 38, 201 Elizabeth Street
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 4144
sydney@dlapiper.com

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities.

For further information, please refer to www.dlapiper.com

Copyright © 2013 DLA Piper. All rights reserved.

If you would like to reproduce any of this publication, please contact Michael Regos on +61 3 9274 5437 or michael.regos@dlapiper.com.

[Doc ID: 1201475141]